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Rules, Regulations, Orders

TITLE 6—AGRICULTURAL CREDIT CHAPTER II—COMMODITY CREDIT CORPORATION

[1941 CCC Rye Form 1—Instructions]

PART 219—1941 RYE LOANS

COMMODITY CREDIT CORPORATION INSTRUCTIONS CONCERNING LOANS ON 1941 RYE

These instructions are issued pursuant to the provisions of Title III, sec. 302 (a) of the Agricultural Adjustment Act of 1938, as amended.

Commodity Credit Corporation has authorized the making of loans in accordance with these instructions upon the security of rye stored on farms.

Sec.

- 219.1 Definitions.
- 219.2 Areas.
- 219.3 Amount of loans.
- 219.4 Maturity and interest rate.
- 219.5 Determination of quantity of rye.
- 219.6 Farm storage.
- 219.7 Liens.
- 219.8 Insurance.
- 219.9 County agricultural conservation committees.
- 219.10 Source and preparation of documents.
- 219.11 Source of loans.
- 219.12 Purchase of loan.
- 219.13 Offices of the representatives of Commodity Credit Corporation.
- 219.14 Release of collateral.

§ 219.1 *Definitions.* For the purpose of the instructions in this part and the notes and chattel mortgages relating thereto, the following terms shall be construed, respectively, to mean:

(a) *Eligible producer.* Any person, partnership, association or corporation producing rye as landowner, landlord, or tenant upon whose farm the 1941 total soil-depleting acreage does not exceed the total soil-depleting acreage allotment for the farm under the 1941 Agricultural Conservation Program.

(b) *Eligible rye.* Rye grading No. 2 or better or rye grading No. 3 solely on the factor of test weight but otherwise grading No. 2 or better produced in 1941, the beneficial interest to which is and always has been in the eligible producer.

Rye grading tough, light smutty, smutty, light garlicky, garlicky or rye containing in excess of one percent (1%) ergot shall not be eligible for a loan. Rye containing in excess of $\frac{3}{10}$ of one percent, but not in excess of one percent (1%) ergot shall be eligible for a loan at discounts set out in § 219.3 hereof.

(c) *Eligible storage* shall consist of farm bins and granaries which are of such substantial and firm construction as to afford safe storage of the rye for a period of two (2) years and permit effective fumigation for the destruction of insects and afford protection against rodents, other animals, thieves, and weather, as determined by the county agricultural conservation committees.

(d) *Lending agency.* Any bank, cooperative marketing association, or other corporation, partnership, or person making loans in accordance with these instructions, which has executed the Contract to Purchase on 1940 CCC Form E.

(e) *Eligible paper.* Eligible paper shall consist of notes of producers secured by chattel mortgages representing rye in existence and undamaged from the perils of fire, lightning, inherent explosion, cyclone, tornado, windstorm and flood, dated on or subsequent to June 1, 1941, and prior to January 1, 1942, and executed in accordance with these instructions, with State documentary revenue stamps affixed thereto, where required by law. Notes executed by an administrator, executor, or trustee will be acceptable only where valid in law.*

*§§ 219.1 to 219.14, inclusive, issued under the authority contained in sec. 302 (a), 52 Stat. 43; 7 U.S.C., Sup., 1302.

§ 219.2 *Areas.* Loans will be made on eligible rye stored on farms in the States of Michigan, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.*

§ 219.3 *Amount of loans.* The loan value for eligible rye grading No. 2 or better, or rye grading No. 3 solely on the factor of test weight but otherwise grading No. 2 or better, shall be thirty-five (35) cents per bushel less than the applicable farm storage loan value for No. 2 Hard Winter Wheat (under the 1941

CONTENTS

RULES, REGULATIONS, ORDERS

TITLE 6—AGRICULTURAL CREDIT:	Page
Commodity Credit Corporation:	
Loan instructions, 1941:	
Barley.....	3493
Rye.....	3491

TITLE 7—AGRICULTURE:

Agricultural Adjustment Administration:	
Wheat referendum results, 1941-1942 marketing year.....	3519
Agricultural Marketing Service:	
Grain warehouse regulations, Amendment No. 3.....	3511
Marketing of perishable agricultural products; regulations and rules of practice.....	3496
Bureau of Entomology and Plant Quarantine:	
Gypsy moth and broomtail moth quarantine, instructions modified.....	3512
Federal Crop Insurance Corporation:	
Wheat crop insurance regulations, 1942.....	3512

TITLE 24—HOUSING CREDIT:

Federal Savings and Loan Insurance Corporation:	
Advertisement of insurance of accounts, amendment....	3519

TITLE 31—MONEY AND FINANCE:

TREASURY:	
Monetary Offices:	
Foreign exchange transactions, general license amended.....	3519

TITLE 43—PUBLIC LANDS: INTERIOR:

General Land Office:	
Lease or sale of tracts in excess of five acres in irregular sections.....	3519

NOTICES

Department of Agriculture:	
Office of the Secretary:	
Delegation of regulatory powers (3 documents).....	3523
(Continued on next page)	

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CONTENTS—Continued

Department of the Interior:	
General Land Office:	Page
Utah, air navigation site withdrawal revoked	3523
Department of Labor:	
Wage and Hour Division:	
Learner employment certificates, issuance for various industries	3523
Lumber and timber products industry, hearing on minimum wage recommendation	3524
Federal Power Commission:	
Corporation Service Co., et al. v. Mississippi River Fuel Corp., continuance allowed	3526
Federal Works Agency:	
Office of the Administrator:	
Public Works Administration, legal administrative functions consolidated (2 documents)	3527
Securities and Exchange Commission:	
Derby Gas & Electric Corp., et al., hearing reconvened	3527
War Department:	
Contract summaries:	
Boeing Aircraft Co.	3519
Sperry Gyroscope Co., Inc.	3522

Wheat Loan Program of Commodity Credit Corporation) or fifty (50) cents per bushel, whichever is lower, except that the loan value for eligible rye containing in excess of $\frac{3}{10}$ of one percent but not in excess of one percent (1%) ergot shall be discounted one cent for each $\frac{1}{10}$ of one percent ergot in excess of $\frac{3}{10}$ of one percent.*

§ 219.4 *Maturity and interest rate.* All loans upon the security of rye may be made by local lending agencies or by Commodity Credit Corporation and the notes evidencing such loans will be pay-

able on demand or April 30, 1942. All loans will bear interest at the rate of three (3) percent per annum. Notes evidencing such loans must be dated on or before December 31, 1941.*

§ 219.5 *Determination of quantity of rye.* Loans shall be made at values expressed in cents per bushel, a bushel being determined to be 56 pounds of clean rye free of dockage, when determined by weight, or 1.25 cubic feet of rye testing 56 pounds per bushel when determined by measurement. In determining the quantity of rye in farm storage by measurement, fractional pounds of the bushel test weight for rye testing less than 56 pounds will be disregarded, and the quantity determined as above will be the following percentages of the quantity determined for 56 pound rye:

	Percent
For rye testing 56 pounds or over	100
For rye testing 55 pounds or over, but less than 56 pounds	98
For rye testing 54 pounds or over, but less than 55 pounds	96
For rye testing 53 pounds or over, but less than 54 pounds	95
For rye testing 52 pounds or over, but less than 53 pounds	93

§ 219.6 *Farm storage.* Rye stored on the farm must have been stored in the granary at least thirty (30) days prior to its inspection for measurement, sampling and sealing. In accordance with regulations issued by the Secretary of Agriculture, the state and county agricultural conservation committees will inspect and approve storage facilities and will arrange for measuring, sampling, grading and sealing the rye collateral in approved structures. Chattel mortgages covering farm-stored rye must be executed and filed in accordance with the applicable state law. Producers may obtain information and assistance from the county agricultural conservation committees in regard to the execution and filing of such chattel mortgages. Where the borrower is a tenant farmer, and the rye collateral is stored on the farm, the expiration date of the lease shall be given in section 1 (d) of the chattel mortgage (1941 CCC Grain Form AA). If the expiration date of the lease is prior to June 30, 1942, the landlord shall execute the Consent for Storage, section 5 of 1941 CCC Grain Form AA. The consent agreement shall also be signed by any other party or parties entitled to possession. Each producer must designate in section 1 (b) of the mortgage (1941 CCC Grain Form AA) a shipping point reasonably convenient for the delivery of the rye as determined by the county committee. Notes and mortgages will not be acceptable which provide a shipping point other than the normal shipping point customarily used by the producers in the locality in which the rye was produced. A separate note and chattel mortgage must be submitted for rye stored on each quarter section of land.*

§ 219.7 *Liens.* The rye collateral must be free and clear of all liens except in favor of the lienholders listed in the

space provided therefor in 1941 CCC Grain Form AA. The names of the holders of all existing liens on the pledged or mortgaged rye, such as landlord, laborers, threshers, or mortgagees, must be listed in the space provided therefor in the chattel mortgage. The waiver and consent to the mortgage of the rye and the payment of the proceeds of the loan and the proceeds of the sale of the rye solely to the producer as contained in the mortgage must be signed personally by all lienholders listed or by their agents having proper authority. Such waiver and consent, etc., may be executed for a corporation by a designated officer thereof customarily authorized to execute such instruments. (In lieu of signing the section of the chattel mortgage entitled "List of Lienholders and Their Waivers and Consent to Pledge," lienholders may sign 1940 CCC Wheat Form AB, properly corrected, which must completely identify the related note.) The producer may direct in the note (1941 CCC Grain Form A) that the proceeds of the loan be made payable to him and/or such other person or concern as he may direct thereon. Producers should read carefully all real estate or other mortgages previously given by them in order to determine whether or not crops are covered thereby. Any fraudulent misrepresentation of fact made in the execution of the note and mortgage and related forms shall render the producer personally liable for the amount of the loan and subject to the provisions of the United States Criminal Code.*

§ 219.8 *Insurance.* Producers must obtain primary insurance on rye for not less than the amount of the loan plus accrued interest to maturity. Such insurance shall be evidenced by a certificate, in a form approved by Commodity Credit Corporation, issued by a company or association licensed to do business in the State in which the rye is stored. In addition to the foregoing, Commodity Credit Corporation has obtained a blanket insurance policy to protect it against errors and omissions in the primary insurance coverage, e. g., failure of primary insurance company to pay loss on account of theft and wrongful conversion, flood and inherent explosion, and certain other risks not covered by the primary insurance carried by the producers. This secondary insurance will be secured by Commodity Credit Corporation for all loans and the cost of the insurance will be paid from service fees collected from the producer.*

§ 219.9 *County agricultural conservation committees.* Forms will be obtainable from county agricultural conservation committees in the above-named States or from the office of the Representative of Commodity Credit Corporation serving the area. The producer's note contains an approval which must be signed in each instance by a member of the county committee of the county in which the rye is stored. Pursuant to instructions issued by the Secretary of Agriculture, the state and county committees

will determine or cause to be determined, the quantity and grade of the rye collateral and the amount of the loan. All loan documents will be examined and approved by the county committee, who will retain all documents except the producer's note, which shall be forwarded to the payee.

APPROVAL OF 1941 RYE LOANS BY MEMBER OF COUNTY COMMITTEE

By signing in the space provided on the Producer's Note (1941 CCC Grain Form A) the member certifies for and on behalf of the county committee to its best knowledge and belief that the rye securing said note and the storage structure(s) in which said rye is stored have been inspected and sealed and the quantity, quality, and loan value determined in accordance with regulations of the Secretary of Agriculture; that the representations set forth in the chattel mortgage are true and correct; that the chattel mortgage covering said rye has been properly executed and will be filed for record in accordance with the requirements of Commodity Credit Corporation; that satisfactory evidence of authority of all parties executing note, chattel mortgage, lien-waiver(s), and consent for storage has been received, and any documentary evidence of authority will be held by the Committee; that the original or a duplicate copy of said mortgage bearing receipt of the county recording official will be held by the Committee; that a primary insurance certificate on an approved form is filed with said chattel mortgage and that all lienholders have waived the priority of their liens and consents granted for storage if necessary.

§ 219.10 *Source and preparation of documents.* Forms will be obtainable from any county agricultural conservation committee in the areas designated in § 219.2 hereof and copies for the purpose of information may be obtained from the office of the Representative serving the area. All blanks in 1941 CCC Grain Forms A and AA must be filled in with ink, typewriter, or indelible pencil, and no documents containing additions, alterations, or erasures will be accepted by Commodity Credit Corporation. In order to meet costs of local expenses County Agricultural Associations will collect a service fee for all loans, which fee will also cover any service the producer may require in having his loan documents completed.*

§ 219.11 *Source of loans.* It is contemplated that loans will ordinarily be obtained from banks and other local lending agencies, which, in turn, may sell the paper evidencing such loans to Commodity Credit Corporation. Producers may also obtain loans directly from Commodity Credit Corporation. Such notes shall be made payable to Commodity Credit Corporation and shall be delivered to the Representative serving the area in which the rye is stored. Paper for direct loans tendered by mail, in person, or otherwise must be delivered or postmarked prior to January 1, 1942. Upon delivery of all necessary documents properly executed and upon approval of the loan by the Representative, payment will be made pursuant to the request of the producer contained in the notes.*

§ 219.12 *Purchase of loan.* Commodity Credit Corporation will purchase,

without recourse, eligible paper, as defined above, only from lending agencies which have executed and delivered to the office of the Representative to which notes are submitted Contract to Purchase, 1940 CCC Form E, obtainable only from such Representative.

Paper held by lending agencies must be tendered at least 10 days prior to maturity to the Representative holding the Contract to Purchase and serving the area in which the rye is stored. The purchase price to be paid by Commodity Credit Corporation for notes accepted will be the face amount of such notes plus accrued interest from the respective dates to the date of payment of the purchase price at the rate of 1½ percent per annum. Under the terms of the Contract to Purchase, lending agencies are required to report weekly on 1940 CCC Form F all payments or collections on producers' notes held by them, and to remit with such report to Representative of Commodity Credit Corporation, an amount equivalent to 1½ percent interest per annum on the principal amount collected from the date of the note to the date of payment.*

§ 219.13 *Offices of the Representatives of Commodity Credit Corporation.* The locations and addresses of the Representatives previously referred to herein and the areas served by them under these instructions are shown in § 218.22 of the Instructions, 1941 CCC Wheat Form 1.

§ 219.14 *Release of collateral.* The producer may obtain the return of notes secured by rye at any time prior to maturity upon the payment of the principal amount due thereon, plus accrued interest. The loan paper may be sent to an approved bank for collection or the producer may ascertain the amount due and remit directly to the Representative of Commodity Credit Corporation. Partial releases will be made, provided all the rye in any one bin is released. In such cases, the producers must identify to the Office of the Representative of Commodity Credit Corporation the seal number of the bin to be released. Such releases will be made upon payment of the amount loaned on the particular bin of rye, plus interest.*

Dated: June 18, 1941.

[SEAL] J. B. HUTSON,
President.

[F. R. Doc. 41-5078; Filed, July 16, 1941;
11:49 a. m.]

[1941 CCC Barley Form 1—Instructions]

PART 220—1941 BARLEY LOANS

COMMODITY CREDIT CORPORATION INSTRUCTIONS CONCERNING LOANS ON 1941 BARLEY

These instructions are issued pursuant to the provisions of Title III, sec. 302 (a) of the Agricultural Adjustment Act of 1938, as amended.

Commodity Credit Corporation has authorized the making of loans in ac-

cordance with these instructions upon the security of barley stored on farms and in approved public warehouses.

Sec.

- 220.1 Definitions.
- 220.2 Areas in which loans will be made.
- 220.3 Amount of loans.
- 220.4 Maturity and interest rate.
- 220.5 Determination of quantity of barley.
- 220.6 Farm storage.
- 220.7 Chattel mortgages.
- 220.8 Public warehouses.
- 220.9 Warehouse receipts.
- 220.10 Liens.
- 220.11 Insurance.
- 220.12 County agricultural conservation committee.
- 220.13 Source of loans.
- 220.14 Purchase of loans.
- 220.15 Offices of the representatives of Commodity Credit Corporation.
- 220.16 Release of collateral.

§ 220.1 *Definitions.* For the purpose of these instructions and the notes and chattel mortgages relating thereto, the following terms shall be construed, respectively, to mean:

(a) *Eligible producer.* Any person, partnership, association or corporation producing barley as landowner, landlord, or tenant upon whose farm the 1941 total soil-depleting acreage does not exceed the total soil-depleting acreage allotment or permitted acreage under the 1941 Agricultural Conservation Program.

(b) *Eligible barley.* Barley of any class grading No. 5 or better, which was produced in 1941, the beneficial interest to which is and always has been in the eligible producer. Barley grading weevily, stained, blighted, smutty, garricky, ergoty, bleached or tough shall not be eligible for a loan.

(c) *Eligible storage* shall include public grain warehouses and farm-storage, meeting the following respective requirements:

(1) Public grain warehouses which have met the requirements of Commodity Credit Corporation and have executed the Uniform Grain Storage Agreement. Such warehouses may be situated at either terminal or country points.

(2) Farm-storage shall consist of farm bins, and granaries which are of such substantial and firm construction as to afford safe storage of the barley for a period of two years and permit effective fumigation for the destruction of insects and afford protection against rodents, other animals, thieves and weather, as determined by the County Agricultural Conservation Committee.

(d) *Lending agency.* Any bank, cooperative marketing association, or other corporation, partnership, or person making loans in accordance with these instructions, which has executed the Contract to Purchase on 1940 CCC Form E.

(e) *Eligible paper.* Eligible paper shall consist of notes of the producers secured by chattel mortgages or warehouse receipts representing barley in existence and undamaged from the perils of fire, lightning, inherent explo-

sion, cyclone, tornado, windstorm and flood, dated on or subsequent to June 1, 1941 and prior to January 1, 1942, and executed in accordance with these instructions, with State documentary revenue stamps affixed thereto where required by law. Notes executed by an administrator, executor, or trustee will be acceptable only where valid in law.*

* §§ 220.1 to 220.16, inclusive, issued under authority contained in sec. 302 (a), 52 Stat. 43; 7 U. S. C. Sup., 1302

§ 220.2 *Areas in which loans will be made.* Loans shall be made on eligible barley stored in approved public grain warehouses.

Loans will be made on eligible barley stored on farms only in the following counties:

All counties in California, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming; and in the following counties of the following States:

New Mexico. Colfax, Curry, Harding, Quay, Rio Arriba, Roosevelt, San Juan, Taos, McKinley, Mora, San Miguel, and Union.

Oklahoma. Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Craig, Creek, Custer, Dewey, Ellis, Garfield, Grady, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, McClain, Major, Mayes, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pottawatomie, Rogers, Roger Mills, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward.

Texas. Archer, Armstrong, Bailey, Baylor, Briscoe, Carson, Castro, Childress, Clay, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Garza, Gray, Hale, Hall, Hansford, Hartley, Hardeman, Haskell, Hemphill, Hockley, Hutchinson, Kent, King, Knox, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Stonewall, Swisher, Terry, Throckmorton, Wheeler, Wichita, Wilbarger, Yoakum, and Young.

§ 220.3 *Amount of loans.* Loan values on barley except Mixed Barley (Class IV) shall be based for all classes on the numerical grades as provided in the Official Grain Standards of the United States, in accordance with the following schedules:

(a) Barley stored on farms, or barley stored in an approved warehouse in all states in which warehouse-stored barley loans are available, if the warehouse receipt representing the warehouse-stored barley has stamped or typed thereon the following legend signed by the warehouseman:

Handling and storage charges for the period ending June 30, 1942¹ on the barley represented by this warehouse receipt have been paid or otherwise provided for and lien for such charges will not be claimed by the warehouseman from Commodity Credit Corporation or any subsequent holder of this warehouse receipt.

_____, Signed _____
Address Warehouseman

¹ May 31, 1942 for the States of California, Oklahoma, and Texas.

- #1 barley, 45¢ per bushel
- #2 barley, 44¢ per bushel
- #3 barley, 42¢ per bushel
- #4 barley, 39¢ per bushel
- #5 barley, 35¢ per bushel

(b) Barley stored in approved warehouses in all states in which warehouse-stored barley loans are available where lien for charges has not been waived as provided above:

- #1 barley, 38¢ per bushel
- #2 barley, 37¢ per bushel
- #3 barley, 35¢ per bushel
- #4 barley, 32¢ per bushel
- #5 barley, 28¢ per bushel

The above loan values are subject to a discount of 2¢ per bushel for Mixed Barley.*

§ 220.4 *Maturity and interest rate.* Notes secured by farm-stored barley or by warehouse receipts representing barley shall mature on demand, or April 30, 1942. All loans will bear interest at the rate of 3% per annum. Notes evidencing such loans must be dated on or before December 31, 1941.*

§ 220.5 *Determination of quantity of barley.* Loans shall be made at values expressed in cents per bushel, a bushel being determined to be 48 pounds of clean barley free of dockage, when determined by weight, or 1.25 cubic feet of barley testing 48 pounds per bushel when determined by measurement. A deduction of three-quarters of a pound for each sack will be made in determining the net quantity of the collateral when stored as sacked grain. In determining the quantity of barley in farm storage by measurement, fractional pounds of the bushel test weight for barley testing less than 48 pounds per bushel will be disregarded, and the quantity determined as above will be the following percentages of the quantity determined for 48-pound barley:

	Percent
For barley testing 48 pounds or over.....	100
For barley testing 47 pounds or over, but less than 48 pounds.....	98
For barley testing 46 pounds or over, but less than 47 pounds.....	96
For barley testing 45 pounds or over, but less than 46 pounds.....	94
For barley testing 44 pounds or over, but less than 45 pounds.....	92
For barley testing 43 pounds or over, but less than 44 pounds.....	90
For barley testing 42 pounds or over, but less than 43 pounds.....	88
For barley testing 41 pounds or over, but less than 42 pounds.....	85
For barley testing 40 pounds or over, but less than 41 pounds.....	83
For barley testing 39 pounds or over, but less than 40 pounds.....	81
For barley testing 38 pounds or over, but less than 39 pounds.....	79
For barley testing 37 pounds or over, but less than 38 pounds.....	77
For barley testing 36 pounds or over, but less than 37 pounds.....	75
For barley testing 35 pounds or over, but less than 36 pounds.....	73

§ 220.6 *Farm storage.* Barley stored on the farm must have been stored in the granary at least thirty (30) days prior to its inspection for measurement,

sampling and sealing. In accordance with regulations issued by the Secretary of Agriculture, the state and county agricultural conservation committees will inspect and approve storage facilities and will arrange for measuring, sampling, grading and sealing the barley collateral in approved structures. Chattel mortgages covering farm-stored barley must be executed and filed in accordance with the applicable state law. Producers may obtain information and assistance from the county agricultural conservation committees in regard to the execution and filing of such chattel mortgages. Where the borrower is a tenant farmer and the barley collateral is stored on the farm, the expiration date of the lease shall be given in section 1 (d) of the chattel mortgage. If the expiration date of the lease is prior to June 30, 1942, the landlord shall execute the Consent for Storage, section 5 of the Chattel Mortgage. The consent agreement shall also be signed by any other party or parties entitled to possession. Each producer must designate in section 1 (b) of the chattel mortgage a shipping point reasonably convenient for the delivery of the barley as determined by the county committee. Notes and mortgages will not be acceptable which provide a shipping point other than the normal shipping point customarily used by the producers in the locality in which the barley was produced. A separate note and chattel mortgage must be submitted for barley stored on each quarter section of land.*

§ 220.7 *Chattel mortgages.* All documents must be carefully examined as to compliance with state requirements.*

§ 220.8 *Public warehouses.* Commodity Credit Corporation will accept only negotiable insured warehouse receipts covering barley pledged as collateral to notes on 1940 CCC Wheat Form B, properly corrected, issued by any public grain warehouse which has executed the Uniform Grain Storage Agreement. Warehousemen desiring approval should communicate with the Representative of Commodity Credit Corporation serving the area, at whose offices will be available a list of approved warehouses and their locations. A list of approved warehouses for the area may also be obtained at any State or County Agricultural Conservation Office. Approved warehousemen shall not issue and have outstanding at any time warehouse receipts in excess of the normal working capacity or licensed capacity of the warehouse. Warehousemen shall be required to deliver either the identical barley or country-run barley equal to that described in the warehouse receipts and accompanying certificates or documents.*

§ 220.9 *Warehouse receipts.* Warehouse receipts must be dated on or prior to the date of the related note and properly assigned by an endorsement in blank, so as to vest title in the holder,

or issued to bearer, and must be issued by approved warehousemen. Unless the warehouse receipts are stamped or printed "insured" there must be attached or included in the Certificate of the warehouseman the statement that the barley is insured for not less than the market value, against the hazards of fire, lightning, inherent explosion, windstorm, cyclone and tornado. Commodity Credit Corporation will not accept warehouse receipts indicating any lien for charges prior to unloading in or delivery to the warehouse issuing such receipts. Lien for storage charges will be recognized by Commodity Credit Corporation only from May 15, 1941, or the dates of the warehouse receipts, whichever is later. Such receipts must set out in their written or printed terms the gross weight or bushels, the class and grade, the percentage of sound barley, test weight and all other facts and statements required to be stated in the written or printed terms of the negotiable warehouse receipts under the provisions of section 2 of the Uniform Warehouse Receipts Act or to be accompanied by the Certificate of the warehouseman identified to such warehouse receipt, setting out such information and shall be based on the inbound movement or delivery of the grain to an approved warehouse.*

§ 220.10 *Liens.* The barley collateral must be free and clear of all liens except in favor of the lienholders listed in the space provided therefor in the chattel mortgage or note and loan agreement. The names of the holders of all existing liens on the pledged or mortgaged barley, such as landlord, laborers, threshers, or mortgagees, must be listed in the space provided therefor in the mortgage or loan agreement. The waiver and consent to the pledge or mortgage of the barley and the payment of the proceeds of the loan and the proceeds of the sales of the barley solely to the producer as contained in the mortgage or loan agreement must be signed personally by all lienholders listed or by their duly authorized agents; or, if corporations, by the designated officer thereof customarily authorized to execute such instruments. (In lieu of signing the section of the chattel mortgage entitled "List of Lienholders and Their Waivers and Consent to Pledge," lienholders may sign 1940 CCC Wheat Form AB, properly corrected, which must completely identify the related note.) The producer may direct in the note (1941 CCC Grain Form A) that the proceeds of the loan be made payable to him and/or such other person or concern as he may direct thereon. Producers should read carefully all real estate or other mortgages previously given by them in order to determine whether or not crops are covered thereby. Any fraudulent misrepresentation of fact made in the execution of the note and mortgage and related forms shall render the producer personally liable for the amount of the loan and subject to the provisions of the United States Criminal Code.*

§ 220.11 *Insurance*—(a) *Barley stored on farms.* The producer must obtain primary insurance on barley stored on the farm for not less than the amount of the loan, plus accrued interest to maturity. Such insurance shall be evidenced by a certificate in a form approved by Commodity Credit Corporation issued by a Company or Association licensed to do business in the State in which the barley is stored. The insurance coverage may be obtained through the customary channels and the form of certificate required shall be furnished by the Agent writing same.

(b) *Barley stored in approved warehouses.* With respect to such barley, the warehouseman shall provide insurance against the perils of fire, lightning, inherent explosion and windstorm, cyclone and tornado, for the full market value thereof, so long as receipts are outstanding.

In addition to the foregoing, Commodity Credit Corporation has obtained a blanket insurance policy to protect it against errors and omissions in the primary insurance coverage, e. g., the failure of the primary insurance to pay losses on account of theft and wrongful conversion, flood and inherent explosion, and certain other risks not covered by the primary insurance. This Commodity insurance will be secured by Commodity Credit Corporation for all loans and the cost of the insurance will be paid from the service fees collected from producers.*

§ 220.12 *County agricultural conservation committee.* Forms will be obtained from the county agricultural conservation committee in the above-named States or from the office of the Representative of Commodity Credit Corporation. The producers' notes contain approvals which should not bear a date prior to the date of the note or loan agreement and which must be signed in each instance by a member of the county agricultural conservation committee of the county in which the barley was produced, for warehoused barley, and the county in which the barley is stored, for farm-stored barley. Pursuant to instructions issued by the Secretary of Agriculture, the state and county committees will determine or cause to be determined the quantity and grade of the barley collateral and the amount of the loan. All loan documents will be examined and approved by the county committee, who will retain all documents except the producer's note. In order to meet the cost of the local expenses, County Agricultural Associations will collect a service fee for all loans.

APPROVAL OF 1941 BARLEY LOANS BY MEMBER OF COUNTY COMMITTEE

(a) By signing in the space provided on the Producer's Note (1941 CCC Grain Form A) the member certifies for and on behalf of the county committee to its best knowledge and belief that the barley securing said note and the storage structure(s) in which said barley is stored have been inspected and sealed and the quantity, quality and loan value determined in accordance with regulations of the

Secretary of Agriculture; that the representations set forth in the chattel mortgage are true and correct; that the chattel mortgage will be filed for record in accordance with the requirements of Commodity Credit Corporation; that satisfactory evidence of authority of all persons executing note, chattel mortgage, lien-waiver(s) and consent for storage has been received, and any documentary evidence of authority will be held by the committee; that the original or a duplicate copy of said mortgage bearing receipt of the county recording official will be held by the committee; that a primary insurance certificate or an approved form is filed with said chattel mortgage and that all lienholders have waived the priority of their liens and consents granted for storage if necessary.

(b) By signing in the space provided on the Wheat Producer's Note and Loan Agreement (1941 CCC Wheat Form B [which has been properly corrected for use as a Barley Producer's Note and Loan Agreement]) the member certifies for and on behalf of the county committee to the best knowledge and belief of the county committee that the representations set forth by the producer are true and correct; that the amount of the loan on the described barley has been correctly determined on the basis of the warehouse receipts in accordance with these instructions and that all existing liens on the pledged barley are listed in section 3 of the note and loan agreement

§ 220.13 *Source of loans.* Loans may be obtained from banks and other local lending agencies, which in turn, may sell the paper evidencing such loans to Commodity Credit Corporation. Producers may also obtain loans direct from the Corporation on notes made payable to the Corporation, which shall be delivered to the Representative serving the area in which the barley is stored, delivered or post-marked prior to January 1, 1942. Upon approval of the loan by the Representative, payment will be made pursuant to the Letter of Transmittal.*

§ 220.14 *Purchase of loans.* Commodity Credit Corporation will purchase, without recourse, eligible paper, as defined above, only from lending agencies which have executed and delivered to the office of the Representative of Commodity Credit Corporation to which notes are submitted Contract to Purchase, 1940 CCC Form E, obtainable only from such Representatives.

Paper held by lending agencies must be tendered at least 10 days prior to maturity to the Representative holding the Contract to Purchase and serving the area in which the barley is stored. The purchase price to be paid by Commodity Credit Corporation for notes accepted will be the face amount of such notes, plus accrued interest from the respective dates to the date of payment of the purchase price at the rate of 1½ percent per annum. Under the terms of the Contract to Purchase, lending agencies are required to report weekly on 1940 C.C.C. Barley Form F all payments or collections on producers' notes held by them, and to remit with such report to the Representative of Commodity Credit Corporation, an amount equivalent to 1½ percent interest per annum on the principal amount collected from the date of the note to the date of payment.*

§ 220.15 *Offices of the Representatives of Commodity Credit Corporation.*

The locations and addresses of the Representatives previously referred to herein and the areas served by them under these instructions are shown in § 218.22 of the Instructions, 1941 CCC Wheat Form 1.*

§ 220.16 *Release of collateral.* The producer may obtain the return of notes secured by barley at any time prior to maturity, upon the payment of the principal amount due thereon, plus accrued interest and charges. No allowance will be made for storage by Commodity Credit Corporation. The loan paper may be sent to an approved bank for collection or the producer may ascertain the amount due and remit directly to the office of the Representative of Commodity Credit Corporation holding the paper. Partial releases of collateral will be made as follows:

(a) In the case of farm-stored barley, the producer must identify to the Representative the seal number of the bin to be released. Such release must cover all the barley in any one bin. Such release will be made upon payment of the amount loaned on the particular bin of barley, plus interest.

(b) In the case of elevator-stored barley, producers desiring to obtain partial release should notify the Representative serving the area in which the barley is stored, describing the barley to be released, by warehouse receipt numbers. Each partial release must cover all the barley under one warehouse receipt. The warehouse receipt representing barley will be released against payment of the amount loaned on the barley to be released, plus interest on such amount and any charges applicable thereto.*

Dated: June 19, 1941.

[SEAL]

J. B. HUTSON,
President.

[F. R. Doc. 41-5077; Filed, July 16, 1941;
11:49 a. m.]

TITLE 7—AGRICULTURE

CHAPTER I—AGRICULTURAL MARKETING SERVICE

SUBCHAPTER B—MARKETING OF PERISHABLE AGRICULTURAL PRODUCTS

By virtue of the authority vested in the Secretary of Agriculture by the Perishable Agricultural Commodities Act, 1930 (46 Stat. 531; 7 U.S.C., secs. 499a-499r), as amended, and by the Act of March 3, 1927 (44 Stat. 1355; 7 U.S.C., secs. 491-497), and in order to carry out the powers vested in the Secretary by the said Acts, the following rules and regulations are hereby promulgated:

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Sec.

- 46.1 Meaning of words.
46.2 Definitions.

ADMINISTRATION

- 46.3 Chief of service.

LICENSES

- Sec.
46.4 License required.
46.5 Application for license.
46.6 License fee.
46.7 Copies of licenses.
46.8 Termination of license; notice.
46.9 Issuance of license.
46.10 Nonlicensed person; liability; penalty.
46.11 What constitutes valid license.
46.12 Forms of inscriptions.
46.13 Address or membership changes.
46.14 Arrearage fees.

ACCOUNTS AND RECORDS

- 46.15 Accounts and record of licensee.
46.16 Lot numbers.
46.17 Sales tickets to bear serial numbers.
46.18 Record of produce received.
46.19 Documents to be preserved.
46.20 Inspection of records.
46.21 No disclosure of business of licensee.

SUSPENSION AND REVOCATION OF LICENSES

- 46.22 When licenses revoked or suspended.
46.23 Suspension for lack of records.
46.24 Suspension for refusal of records inspection.
46.25 Suspension for noncompliance.
46.26 Publication of order of suspension or revocation.
46.27 Suspension or revocation order.

SERVICE OF COMPLAINTS OR ORDERS

- 46.28 Sufficient service.

TRADE TERMS AND DEFINITIONS

- 46.29 Terms construed.

SUNDAYS AND HOLIDAYS

- 46.30 Sundays and holidays excluded.
46.31 Sundays and holidays included.

INSPECTION SERVICE

- 46.32 Inspection service.

COPIES OF RECORDS

- 46.33 Copies of records; how obtained.

§ 46.1 *Meaning of words.* Words in this part in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand.*

*§§ 46.1 to 46.33, inclusive, issued under the authority contained in 46 Stat. 531, as amended; 7 U.S.C. 499a-499r.

§ 46.2 *Definitions.* As used in this part, the terms as defined in section 1 of the act shall apply with equal force and effect. In addition, and except as may be provided otherwise herein, the following definitions shall apply to terms used in the regulations in this part:

(a) *The Act.* This term means the Perishable Agricultural Commodities Act, approved June 10, 1930 (46 Stat. 531), and legislation supplementary thereto and amendatory thereof;

(b) *Department.* This term means the United States Department of Agriculture;

(c) *Secretary.* This term means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore lawfully delegated, or to whom the Secretary may hereafter lawfully delegate, the authority to act in his stead;

(d) *Chief of service.* This term means the Chief or Acting Chief of the Agricul-

tural Marketing Service of the United States Department of Agriculture;

(e) *In commerce.* This term means interstate or foreign commerce as defined in section 1, paragraphs 3 and 8 of the Act;

(f) *Licensee.* This term means any person who holds an unrevoked and valid unsuspended license issued under the Act;

(g) *Inspector.* This term shall be deemed to mean any person authorized or licensed by the Secretary to inspect any perishable agricultural commodity;

(h) *Produce.* This term means any perishable agricultural commodity, as defined in section 1, paragraph 4 of the Act;

(i) *Fresh fruits and fresh vegetables.* This term includes all products generally considered by the trade as perishable fruits and vegetables, whether or not frozen or packed in ice and whether or not held in common or cold storage, but does not include those which have been dried or manufactured into articles of food of a different character;

(j) *Cherries in brine.* This term means cherries packed in an aqueous solution containing sulphur dioxide or other bleaching agent of sufficient strength to preserve the product, with or without the addition of hardening agents;

(k) *Wholesale or jobbing quantities.* This term as used in section 1, paragraph 6, of the Act means quantities of produce of not less than one ton in weight shipped or received by rail, truck, boat, or any other means of transportation;

(l) *Truly and correctly to account.* This term shall be deemed to include (1) the prompt rendering of a true and correct itemized statement of the sale or other disposition of any consignment of perishable agricultural commodities in commerce with full payment of the gross amount for which such produce is sold, less the proper, usual, or agreed selling charges and all other expenses necessarily and actually incurred or agreed to in the handling thereof; (2) the prompt payment of deficits or other adjustments resulting from the handling of produce on consignment or for or on behalf of another in commerce; (3) the prompt payment of brokerage duly earned in connection with produce in commerce; and (4) the prompt payment of the purchase price of other amount due either the seller or the buyer in accordance with the terms of the agreement between the parties concerned in settlement for produce purchased or sold in commerce;

(m) *Account promptly.* This term means that full accounting and payment of the net proceeds in cash or its equivalent shall be effected within 10 days after the day on which the final sale shall have been made of any lot of produce sold on commission or otherwise for or on behalf of another, unless otherwise

provided by agreement between the parties: *Provided*, That in the case of a sale on commission at shipping point or of a shipment diverted while in transit or diverted from one terminal market to another, the 10-day period shall be computed from the time of arrival of the shipment at destination. This term also means that the payment of the purchase price or other amount due either the seller or the buyer of produce shall be made in accordance with the terms of the contract of purchase and sale, or, if time of payment is not specified, shall be made within a reasonable time after delivery and acceptance of the produce purchased and sold, and that brokerage charges shall be paid within a reasonable time after having been earned;

(n) *Reject*. This term shall be deemed to mean the act of any person who has purchased or offered to handle on consignment or otherwise, for or on behalf of another, produce in commerce, (1) of refusing or failing to accept such produce within a reasonable time, or (2) of advising the seller or shipper or his agent that he will not receive such produce in accordance with his contract or offer, or (3) of indicating an intention not to accept such produce through an act or failure to act either of which is inconsistent with the contract;

(o) *Reasonable time*. This term as used in paragraph (n) above shall be deemed to mean with respect to rail shipments not to exceed 24 hours after receipt of notice of arrival of the produce, and with respect to boat shipments not to exceed 24 hours after the produce is unloaded and made accessible for inspection, unless the purchaser applies for Federal inspection of said produce within this period, or unless at the time of the receipt by the purchaser of notice of arrival of the produce the temperature is sufficiently below freezing to render a complete inspection of the produce dangerous thereto, commodity and existing weather considered. In case the temperature is dangerously below freezing at the time of arrival of the produce a preliminary inspection for the sole purpose of determining whether transit freezing injury is present in the load shall be made by the purchaser or caused to be made as soon as possible after the receipt of such notice of arrival, and the further inspection of the produce for the purpose of determining whether the produce meets the requirements of the contract of purchase and sale may be deferred until such time as the temperature and weather conditions will permit such inspection to be safely made, but reasonable time shall not extend beyond the time when such inspection can be safely made. The meaning of the terms "as soon as possible" and "safely made" shall be determined upon a consideration of all the facts and circumstances shown to exist in each case: *Provided*, That if the receiver has made arrangements to be notified of arrival on Sunday or a legal holiday and if so noti-

fied the 24-hour period shall run from 12:01 a. m. to 12 midnight on the next day.

(p) *Acceptance*. This term shall be deemed to mean that unless the purchaser notifies the seller within a reasonable time as defined in paragraph (o) that he rejects the produce, or unless the purchaser applies for Federal inspection of said produce within a reasonable time (24 hours) and takes action to notify the seller of his rejection of said produce within an hour after he has received either a verbal or a written report of the result of such inspection, or unless, in the case of dangerous freezing temperature as provided in paragraph (o), he shall have notified the seller, within 24 hours after receipt of notice of arrival of the produce, as to the weather conditions which prevent thorough inspection and notified the seller of his rejection immediately after inspection can be safely made following temperature dangerously below freezing, he will be deemed to have accepted the produce, subject to his right to claim damages in case such produce failed to meet the terms of the contract.*

Administration

§ 46.3 *Chief of service*. The Chief or Acting Chief of Service shall perform for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of the Act and of the regulations in this part.*

Licenses

§ 46.4 *License required*. No person shall at any time carry on the business of a commission merchant, dealer, or broker without a license issued by the Secretary and countersigned by the Chief of Service which is valid and effective at such time.*

§ 46.5 *Application for license*. Any person who desires to secure a license to carry on such business shall make application therefor on a form to be obtained from the Chief of Service or his representatives. Applications must be signed by the owner, partner, or, in the case of a corporation, an official duly authorized to do so.*

§ 46.6 *License fee*. Each application shall be accompanied by the license fee of ten dollars (\$10) in the form of a money order, bank draft, cashier's check, or certified check, made payable to the U. S. Department of Agriculture, and the application and fee shall be forwarded to the Chief, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, D. C. Thereafter the annual fee of ten dollars (\$10) required by the Act shall be remitted in the same manner.*

§ 46.7 *Copies of licenses*. Copies of licenses may be issued on request upon the payment of a fee of \$1 for each copy. Each copy shall contain the word "COPY" in conspicuous letters on its face and be certified by the Chief of Service as a true copy of the original.*

§ 46.8 *Termination of license; notice*. Thirty days or more prior to the anniversary date of a license, the Chief of Service shall mail a notice to the licensee at the latest address known to the Chief of Service, advising that the license will automatically terminate on its anniversary date unless the annual fee of \$10 is paid on or before said date. A license which has automatically terminated because of failure of the licensee to pay the annual fee may be reinstated within thirty days after its automatic termination upon payment of a fee of \$15.*

§ 46.9 *Issuance of license*. Upon receipt of an application accompanied by the proper fee for a license, the Secretary will, if the applicant is found to be eligible, issue a license certifying that the licensee is authorized to engage in the business of a commission merchant and/or dealer and/or broker. The fee so tendered, together with any arrearage fees and/or penalty shall be deposited as soon as practicable in a special deposit account, until the license is issued or denied or until the check or other form of remittance is determined to be valid. If the license is denied, the fee shall be returned or refunded, but, if issued, the fee and any arrearages and penalty shall, as soon as practicable, be deposited in or transferred to miscellaneous receipts and will not thereafter be subject to refund. Fees received for renewal and/or reinstatement of license shall be handled in the same manner as other fees mentioned herein.*

§ 46.10 *Nonlicensed person; liability; penalty*. Any commission merchant, dealer, or broker engaged in business subject to the Act, without a valid and effective license, will be permitted to settle his liability, if such violation is found not to have been willful, by paying the amount of fees accrued from the date the violation started to the date when application for license and fee is submitted, and a penalty not in excess of \$25 as may be determined by the Chief of Service.*

§ 46.11 *What constitutes valid license*. Each license shall bear a serial number, the signature of the Secretary, the seal of the United States Department of Agriculture, and be countersigned by the Chief of Service. The licensee may place upon his stationery, trucks or business sign an inscription that he is licensed under the Act, but such inscription must not be of such form or arrangement as to be deceptive or misleading to the public, nor shall any such inscription be shown unless the person using the same has a license valid at the time.*

§ 46.12 *Forms of inscriptions*. The following inscriptions, for use with or without the license number, meet the foregoing requirements and are endorsed for use by the Department: "Licensed by the U. S. Department of Agriculture under the Perishable Agricultural Commodities Act" or "Licensed under the PACA".*

§ 46.13 *Address or membership changes*. The licensee shall advise promptly the Chief of Service of any

change of address and/or any change in the officers, partners, or ownership, or in the name in which the business is conducted. In case of a change in the ownership of a business, or in the name of a corporation, or in a partnership, such as the death, withdrawal or addition of a partner or partners, or the conduct of a business in a name different from that shown on the license, a new license is required.*

§ 46.14 *Arrearage fees.* Arrearage fees to be paid by an applicant shall be computed on a basis of $\frac{1}{2}$ of the annual fee of \$10, or eighty-three and one-third cents ($83\frac{1}{3}\%$), per month or fraction thereof from the time the applicant should have been licensed to the date application and valid fee were submitted for a license.*

Accounts and Records

§ 46.15 *Accounts and record of licensee.* Every commission merchant, dealer, and broker shall preserve for a period of 2 years the accounts, records, and memoranda required by the Act fully and correctly disclosing all transactions involved in his business, including the true ownership of such business by stockholding or otherwise.*

§ 46.16 *Lot numbers.* Lot numbers or other identification marks shall be assigned to all lots received to be sold on consignment for the account of another and on purchased lots of similar produce which are being handled at approximately the same time. Such lot numbers or other identification marks shall be such as will distinguish produce of that lot from that of any other lot being handled at the same time.*

§ 46.17 *Sales tickets to bear serial numbers.* Sales tickets or invoices should bear printed serial numbers running consecutively. There shall not be a repetition of a number during a three months' period. At least one carbon copy of each such sales record shall be made and kept on file by the licensee for a period of at least two years, either in the order of the serial numbers or the dates of sales. Every numbered sales ticket or invoice shall be accounted for by retaining the copy thereof even though unused.*

§ 46.18 *Record of produce received.* Each licensee shall keep in consecutive order a complete record of all produce received, showing the date of arrival and unloading, whether received by freight, express, or truck, the car initials and numbers, if any, the number of packages or the quantity received, the name and address of the consignor or seller, and the disposition thereof.*

§ 46.19 *Documents to be preserved.* Bills of lading, diversion orders, paid freight and other bills, car manifests, express receipts, letter and wire correspondence, inspection certificates, accounts of sale, papers relating to loss and/or damage claims against carriers, records as to reconditioning, shrinkage, and dumping, daily inventories by lots,

a consolidated record of all rebates made or received in connection with shipments handled for the account of another, and itemized daily record of cash receipts and ledger records in which sales as shown by sales tickets can be verified, and all other pertinent papers relating to the shipment, handling, and delivery of each lot of produce, shall be preserved and filed.*

§ 46.20 *Inspection of records.* Each licensee shall during ordinary business hours permit any duly authorized representative of the United States Department of Agriculture to enter his place of business and inspect any and all such records pertaining to such business as may be necessary to ascertain the facts material to the investigation of any complaint under the Act. Any necessary facilities for such inspection shall be extended to such representative by the licensee, his agents, and employees.*

§ 46.21 *No disclosure of business of licensee.* No representative of the United States Department of Agriculture shall, without the consent of the licensee, divulge or make known in any manner, except to other representatives of the United States Department of Agriculture who may be required to have such knowledge in the regular course of their official duties, or except insofar as he may be directed by the Secretary, the Chief of Service, or by a court of competent jurisdiction, any facts or information regarding the business of such licensee which may come to the knowledge of such representative through an examination or inspection of the business or accounts of the licensee, or unless the same is relevant and material to the issue in any hearing authorized by the Act.*

Suspension and Revocation of Licenses

§ 46.22 *When licenses revoked or suspended.* Whenever the Secretary determines, as provided in section 6 of the Act, (a) that any commission merchant, dealer, or broker has violated any of the provisions of section 2 or (b) that any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14 (b) of this Act, the Secretary may publish the facts and circumstances of such violation and/or suspend the license of such offender for a period not to exceed 90 days, except that, if the violation is a flagrant or repeated violation of such provisions, or if it be found that the licensee has committed one of the offenses set forth in section 8 (b) or (c) of the Act, the Secretary may revoke the license of the offender.*

§ 46.23 *Suspension for lack of records.* Whenever the Secretary determines that a licensee has failed or refused to keep such records as are prescribed in section 9 of the Act, the facts and circumstances may be published and the license of the offender suspended for a period not to exceed 90 days by order of the Secretary.*

§ 46.24 *Suspension for refusal of records inspection.* Upon the failure or

refusal of any licensee to permit the inspection of accounts, records, and memoranda material to a complaint, the facts and circumstances incident thereto may be published and the license of the offender suspended until such permission is given.*

§ 46.25 *Suspension for noncompliance.* Upon failure of a licensee against whom a reparation order has been issued to show to the satisfaction of the Chief of Service within 5 days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as authorized by section 7 (c) of the Act or has made payment in full or has filed a petition for rehearing or reargument as provided in Part 47, the Chief of Service shall notify the licensee that his license is suspended automatically at the end of the 5-day period until such time as he has shown to the satisfaction of the Chief of Service that he has paid the amount specified with interest.*

§ 46.26 *Publication of order of suspension or revocation.* Immediately upon the issuance of an order of suspension or revocation the Chief of Service will cause general publicity to be given to the action in order that those doing business with the person whose license shall have been suspended or revoked may take due notice thereof.*

§ 46.27 *Suspension or revocation order.* (a) Whenever the Secretary shall order the suspension or revocation of a license, the person against whom such order is directed shall be served by the Chief of Service with a copy of the order and be notified of the effective date thereof.

(b) Except in the case of any license automatically suspended by the Act, a reasonable time, not less than 10 days between the date of issuance and the date upon which the order of suspension or revocation becomes effective, shall be stated in the order within which the licensee may make all necessary arrangements with some other person, whose license shall not have been either suspended or revoked, to safeguard the interests of consignors or other innocent parties whose property or business may be affected by such suspension or revocation and to terminate the affairs and business of such licensee relating to the handling of perishable agricultural commodities in commerce.

(c) After the revocation of his license or during the effective period of any suspension thereof the licensee shall not either directly or indirectly through any agent, employee or otherwise, carry on the business of a commission merchant, broker, or dealer until his status as a licensee has been restored.

(d) The suspension or revocation of a license shall not prevent the licensee from collecting amounts due on his contracts or in connection with transactions in which he acted as an agent and remitting the same promptly to his principals and obligees.*

Service of Complaints or Orders

§ 46.28 *Sufficient service.* Service of any complaint or order required by the Act or prescribed by the regulations in this part shall be deemed sufficient if made by registered mail or personally upon the licensee or upon his attorney. Service so made upon any member of a partnership or any officer of an association or corporation shall be sufficient. Personal service includes leaving notice at the last address furnished the Chief of Service in compliance with the regulations in this part or at the last and usual place of abode of any member of a partnership or officer of an association or corporation.*

Trade Terms and Definitions

§ 46.29 *Terms construed.* Unless otherwise defined, the following terms when included in a contract or communication involved in any investigation made or hearing held pursuant to this Act shall be construed, respectively, to mean:

(a) The term "Today's shipment", or shipment on a specified date (such as shipment September 12), shall mean that the goods referred to shall be under billing by the transportation company the date the order is given or on the date specified in time to be picked up by a train scheduled to move that day's loadings from the shipping point provided that such train shall leave the first pick-up point on its schedule before midnight of the day the order is given.

(b) The term "Tomorrow's shipment" or "Immediate shipment" shall be deemed to mean that the shipment referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 24 hours later than allowed under "Today's shipment".

(c) The term "Quick shipment" shall be deemed to mean that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 48 hours later than that allowed under "Today's shipment".

(d) The term "Prompt shipment" shall be deemed to mean that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 72 hours later than allowed under "Today's shipment".

(e) The term "Shipment first part of week" or "Early part of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Monday or Tuesday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment".

(f) The term "Shipment middle of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Wednesday or Thursday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment".

(g) The term "Last of week" or "Latter part of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave on Friday or Saturday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment".

(h) The provisions "Shipment as soon as possible" or "As soon as cars can be secured" shall be deemed to mean that the shipper is uncertain as to when the shipment can be made but expects to make it within a reasonable time and will make it as soon as possible. But in any case where these words are so used the buyer shall, at any time after 12 days from the date the order is given, have the right to cancel the order or contract of sale provided notice of his decision so to cancel shall have been received by the shipper before shipment has been made.

(i) The term "f. o. b." (for example, "f. o. b. Laredo, Tex.", or even "f. o. b. California") shall be deemed to mean that the commodity quoted or sold is to be placed free on board the car or other agency of through land transportation at shipping point, in suitable shipping condition (see definitions of "suitable shipping condition", paragraphs (j) and (k) of this section) and that the buyer assumed all risks of damage and delay in transit not caused by the shipper, irrespective of how the shipment is billed. The buyer has the right of inspection at destination before the goods are paid for, but only for the purpose of determining that the produce shipped complied with the terms of the contract or order at time of shipment subject to the provision covering suitable shipping condition. This right of inspection does not convey or imply any right of rejection by the buyer because of any loss, damage, deterioration, or change which has occurred in transit.

(j) "Suitable shipping condition" in relation to direct shipments shall be deemed to mean that the commodity, at time of billing, shall be in a condition which, when shipment is handled under normal transportation service and conditions, will assure delivery without abnormal deterioration at the destination specified in contract of sale.

(k) "Suitable shipping condition" in connection with reconsigning or rolling cars shall be deemed to mean that the commodity, at time of sale, shall meet the requirements of the definition of

this phrase provided for application to direct shipments in paragraph (j) of this section.

(l) The term "f. o. b. acceptance" shall be deemed to mean the same as f. o. b. except that the buyer assumes full responsibility for the goods at shipping point and has no right of rejection on arrival, nor has he any recourse against the shipper because of any change in condition of the goods in transit, unless the goods when shipped were not in suitable shipping condition. (See definitions, paragraphs (j) and (k) of this section.) The buyers' remedy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment.

(m) The term "f. o. b. acceptance final" shall be deemed to mean that the buyer accepts the commodity f. o. b. cars at shipping point without recourse.

(n) The term "f. o. b. steamer" shall be deemed to mean that the commodity bought or sold is to be placed free on board the steamer at shipping point in accordance with the terms of the contract and that the buyer assumes all responsibility and risk of damage thereafter.

(o) The term "f. a. s. steamer" shall be deemed to mean that the commodity bought or sold is to be delivered free alongside the steamer in accordance with the terms of the contract and that the buyer assumes all responsibility and risk of damage thereafter.

(p) The term "Delivered" or "Delivered sale" shall be deemed to mean that the commodity quoted or sold is to be delivered by the seller on board car, or on dock if delivered by boat, at the market in which the buyer is located, or at such other market as agreed upon, free of any and all charges for transportation or protective service. The seller assumes all risks of loss and damage in transit not caused by the buyer. For example, a sale of "U. S. No. 1 potatoes delivered Chicago" means that the potatoes when tendered for delivery at Chicago shall meet all the requirements of the U. S. No. 1 grade as to quality and condition.

(q) The term "In transit", "Roller", or "Rolling car" shall be deemed to mean that the commodity referred to is in possession of the transportation company and under movement from shipping point when the quotation is made, and that the car is moving over a route in line of haul between the point of origin and the market in which delivery is to be made, and has been so moving since date of shipment without any delay attributable to the shipper or his agent. If a roller, or rolling car, or car in transit is sold f. o. b. shipping point, the buyer will be deemed to assume only the lowest authorized all-rail freight charges applicable between the point of origin and the destination stated in the contract of purchase, together with car rental and refrigeration and heater charges, if any: *Provided*, That the kind and extent of

the protective service required by the shipper's instructions to the carriers are specified in the contract. But the buyer shall not be deemed to have assumed any demurrage, storage, detention, icing, or heater charges, or diversion or reassignment charges, that would not have accrued had the car been originally shipped direct to the destination named in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification has been duly acknowledged by the carrier, the contract of sale shall be deemed to have become null and void unless otherwise specifically provided.

(r) The term "Tramp car" or "Tramp car sale" shall mean that the commodity has left the shipping point under a bill of lading issued prior to the day on which the quotation is made and has moved or is moving over a route out of line of haul with the market in which it is to be delivered or in which it is being offered or quoted, or which has been moving over a route in line of haul between the point of origin and the market in which it is to be delivered or in which it is being offered or quoted, but has been delayed in transit by the shipper, or has been held by the transportation company at diversion or other points en route awaiting instructions from the shipper and by such holding or delay has missed scheduled movement between points of shipment and the market in which it is to be delivered as the result of the transaction in question. But if sold f. o. b. shipping point, the buyer assumes only the lowest authorized all-rail freight charges applicable between the point of origin and the destination stated in the contract of purchase, together with the car rental and refrigeration and heater charges, if any; *Provided*, That the kind and extent of the protective service required by shipper's instructions to the carriers are specified in the contract. But the buyer shall not assume any demurrage, storage, detention, icing, or heater charges, or diversion or reassignment charges, that would not have accrued had the car been originally shipped direct to the destination provided in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification has been duly acknowledged by the carrier, the contract of sale shall be deemed to have become null and void unless otherwise specifically provided.

(s) The term "Rolling acceptance" shall be deemed to mean that the buyer accepts at time of purchase a commodity which is in the possession of the transportation company and under movement from shipping point, under the terms and conditions described in paragraphs (q), (r) of this section except that the buyer assumes full responsibility for transportation of the goods from time of purchase, has no recourse against the seller because of any change in condition after time of purchase unless the goods when shipped were not in suitable shipping condition, and has no right of rejection on arrival. The buyer's rem-

edy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment. By agreement between the parties, however, the purchase may be made subject to inspection at any specified point while the car is rolling or in transit and the point at which the buyer will assume transportation charges may be specified without affecting the time of acceptance of the commodity.

(t) The words or term "Track sale" or "Sale on track" shall be deemed to mean that when a commodity is sold on track after arrival at destination, the buyer shall be considered to have waived any right to reject the commodity so purchased upon receipt by him or his duly authorized representative, from the seller or his duly authorized representative, of the bill of lading, delivery order, or other document enabling him to obtain the goods from the carrier.

The foregoing shall not be construed as depriving the buyer of a right to reparation when the unloading of the car shall demonstrate that a part of the lading which was not accessible to inspection was of a quality or condition much inferior to that portion which was accessible to inspection; but notice of intention to file claim for reparation must be given seller within 24 hours after receipt by buyer of delivery order or bill of lading.

If the seller gives the date of arrival when quoting price, the buyer shall assume all charges that accrue on the shipment from the date of its arrival in the absence of any written memorandum of sale to the contrary. If the seller fails to furnish the date of arrival when quoting price, in the absence of any written memorandum of sale which includes the date of arrival or specific written statement as to who shall assume such charges as have accrued after arrival, the buyer may assume that the shipment arrived at point of sale on the day and date upon which the purchase was made, and shall be liable only for such charges as would properly attach to a shipment arriving on date it was purchased.

(u) The abbreviations "c. a. f.", "c. a. c.", and "c. i. f." shall be deemed to mean "cost and freight", "cost and charges", and "cost, insurance and freight", respectively. When a sale is made c. a. f. it shall be deemed to mean the same as an f. o. b. sale except that the selling price includes the correct freight charges to destination. C. a. c. sales shall be deemed to be the same as f. o. b. sales except that the selling price includes the correct freight and refrigeration or heater charges to destination. C. i. f. sales shall be deemed to be the same as f. o. b. sales except that the selling price includes insurance and the correct freight, refrigeration, or heater charges to destination.

(v) A "carload" or "carlot" or "car" when referred to in offers, quotations, or sales in which the quantity is not more definitely specified, and in the absence of well-established trade custom or

standard as to size of a "carload" of the commodity in question, shall be deemed to mean not less than the lowest minimum quantity required by the carrier's tariff applicable to the movement, and not more than 10 percent in excess of such lowest minimum tariff requirements, except that where carrier's tariffs provide alternative rates and minima, the buyer shall state which tariff minimum must be observed, and in event of failure so to do, the shipper may exercise his discretion, in no case, however, exceeding the higher tariff minimum quantity, except only such variations therefrom as are permitted in this paragraph.

(w) The term "Shipping-point inspection" shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality and/or condition specifications of the contract and that the seller assumes the risk incident to incorrect certification.

(x) The term "Shipping-point inspection final" or the words "Inspection final" following the name of the State or point as "California inspection final", shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality and/or condition specifications of the contract and that the buyer assumes the risk incident to incorrect certification and is without recourse as to quality and condition.

(y) The term "Subject approval wired Government inspection" shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, and to correctly communicate, by wire or other agreed means, the statements on the certificate as to quality, condition and grade, and other essential information, whereupon the purchaser upon approval thereof will be deemed to have accepted the commodity without recourse as to quality and condition.

(z) The term "Guaranteed advance", as used in connection with an advance payment on consigned produce, shall be deemed to mean that the party making the advance guarantees that the net proceeds to the consignor shall at least equal the amount so advanced, and in any case where a guaranteed advance is made the consignor cannot be held liable for any deficit resulting from the sale of the produce, if such deficit is not occasioned by or contributed to by some act or acts of the consignor.

(aa) The term "Accommodation advance", or "Regular advance", as used in connection with an advance of money or credit against anticipated net proceeds to be realized from the sale of consigned produce, shall be deemed to mean that the shipper had received an advance of money or credit and if the consigned produce does not sell for

enough to cover the cost of transportation and handling, including customary or agreed commission and the advance made to him, the shipper must return to the one making the advance a sum equal to the deficit sustained.

(bb) The term "Price arrival", in the absence of a contrary specific understanding, shall be deemed to mean that the produce is shipped either direct to the customer or to an agent of the shipper, for the benefit of the customer, the price to the subject to agreement between the customer and the shipper upon the arrival of the goods at the customer's destination and with sufficient time being permitted for inspection.

(cc) The term "f. o. b. inspection and acceptance arrival" shall be deemed to mean that the commodity quoted or sold is to be placed by the seller free on board car or other agency of through transportation at shipping point, the cost of transportation to be borne by the buyer, but the seller to assume all risks of loss and damage in transit not caused by the buyer who has the right to inspect the goods upon arrival and to reject them if upon such inspection they are found not to meet the specifications of the contract of sale at destination. The buyer may not reject without reasonable cause. Such a sale is f. o. b. only as to price and is on a delivered basis as to quality and condition.

(dd) The term "f. o. b. sale at delivered price" shall be deemed to mean the same as f. o. b. except that transportation charges from shipping point to destination shall be borne by the seller, that is, the sale is f. o. b. as to quality and delivered as to price.*

Sundays and Holidays

§ 46.30 *Sunday and holidays excluded.* Sundays and legal holidays shall not be included in the computation of the 5-day period provided in section 7 (d) of the Act, nor in connection with the periods defined in § 46.2 (c) (except if the notice of arrival of the produce is received by the purchaser on Sunday or a legal holiday, the 24-hour period shall begin to run at 12:01 a. m. the succeeding day) and § 46.29 except paragraph (a) of said section.*

§ 46.31 *Sundays and holidays included.* Sundays and legal holidays shall be included in the computation of time in all other periods mentioned in the Act or in the regulations in this part.*

Inspection Service

§ 46.32 *Inspection service.* The rules and regulations of the Secretary governing the inspection and certification of fruits and vegetables as outlined in Part 51 and amendments thereto, and such additional amendments as may from time to time be promulgated, insofar as they apply to fresh fruits and fresh vegetables, shall govern the inspection of these products under this Act and are hereby made a part of the regulations in this part.*

Copies of Records

§ 46.33 *Copies of records; how obtained.* Copies of the application and other records pertaining to licensees under this Act may be furnished under the conditions prescribed in the regulations of the Department of Agriculture, and, except where requested by Government officials, upon the payment of the following fees, which shall be deposited in the Treasury of the United States as miscellaneous receipts:

- (a) For each typewritten copy, 15 cents per page.
- (b) For each photographic or photostatic copy, 25 cents per page.
- (c) For each separate authentication, 25 cents.*

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURE COMMODITIES ACT

- | | |
|------|---|
| Sec. | |
| 47.1 | Meaning of words. |
| 47.2 | Definitions. |
| 47.3 | Institution of proceedings. |
| 47.4 | Scope and Applicability of Rules of Practice. |

RULES APPLICABLE TO DISCIPLINARY PROCEEDINGS

- | | |
|-------|--|
| 47.5 | Stipulations and consent orders. |
| 47.6 | Formal complaints and other moving papers. |
| 47.7 | Docket number. |
| 47.8 | Examiners. |
| 47.9 | The answer. |
| 47.10 | Motions and requests. |
| 47.11 | Oral hearing before examiner. |
| 47.12 | Deposition. |
| 47.13 | Subpoenas. |
| 47.14 | Fees of witnesses. |
| 47.15 | Prehearing conferences. |
| 47.16 | The examiner's report. |
| 47.17 | The shortened procedure. |
| 47.18 | Transmittal of record. |
| 47.19 | Argument before secretary. |
| 47.20 | Preparation and issuance of order. |
| 47.21 | Applications for reopening hearings; for rehearings or rearguments of proceedings; or for reconsideration of orders. |
| 47.22 | Filing; service; extensions of time; additional time for filing; and computation of time. |

RULES APPLICABLE TO REPARATION PROCEEDINGS

- | | |
|-------|--|
| 47.23 | Formal complaints. |
| 47.24 | Service of report of investigation. |
| 47.25 | The answer. |
| 47.26 | The reply. |
| 47.27 | Docketing of proceeding. |
| 47.28 | Examiners. |
| 47.29 | Intervention. |
| 47.30 | Motions and requests. |
| 47.31 | Prehearing conferences. |
| 47.32 | Oral hearing before the examiner. |
| 47.33 | Depositions. |
| 47.34 | Subpoenas. |
| 47.35 | Fees of witnesses. |
| 47.36 | The examiner's report. |
| 47.37 | Shortened procedure. |
| 47.38 | Transmittal of record. |
| 47.39 | Argument before the secretary. |
| 47.40 | Issuance of order. |
| 47.41 | Applications for reopening hearings; for rehearings or rearguments of proceedings; or for reconsideration of orders. |
| 47.42 | Filing; service; extensions of time; additional time for filing; and computation of time. |

§ 47.1 *Meaning of words.* Words in this part in the singular form shall be

deemed to import the plural, and vice versa, as the case may demand.*

*§§ 47.1 to 47.42, inclusive, issued under the authority contained in 46 Stat. 531, as amended; 7 U.S.C. 499a-499r.

§ 47.2 *Definitions.* As used in this part, the terms as defined in section 1 of the act shall apply with equal force and effect. In addition, and except as may be provided otherwise herein:

(a) The term "act" means the Perishable Agricultural Commodities Act, approved June 10, 1930 (46 Stat. 531), and legislation supplementary thereto and amendatory thereof;

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore lawfully delegated, or to whom the Secretary may hereafter lawfully delegate, the authority to act in his stead;

(d) The term "Service" means the Agricultural Marketing Service of the Department of Agriculture;

(e) The term "Division" means the Fruits and Vegetables Division of the Service;

(f) The term "Federal Register" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence and means either an oral or a written hearing;

(h) The term "moving paper" means any formal complaint, petition, or order to show cause, by virtue of which a proceeding under the act is instituted;

(i) The term "party" includes the Secretary in those instances where he is named as a party of record in the proceeding;

(j) The term "complainant" means the party upon whose moving paper the proceeding is instituted;

(k) The term "respondent" means the party proceeded against, whether the proceeding be instituted by the Secretary or by a private person;

(l) The term "disciplinary proceeding" means any proceeding (other than a reparation proceeding) arising under the act, in which proceeding it is required by law that the order or other determination of the Secretary shall be made only after an opportunity for a hearing, and, if a hearing be held, only upon the basis of a record made in the course of such hearing;

(m) The term "reparation proceeding" means a proceeding in which money damages are claimed and in which the Secretary is not a party of record;

(n) The term "hearing clerk" means the hearing clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.;

(o) The term "examiner" means any employee of the Department designated by the Secretary to conduct hearings under the act;

(p) The term "examiner's report" means the examiner's report to the Secretary, and includes the examiner's proposed findings of fact, proposed conclusions, and proposed order.*

§ 47.3 *Institution of proceedings*—(a) *Informal complaints*—(1) *Filing*. Any interested person (including any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory, and any employee of the Department) desiring to complain of any violation of any provision of the act by any commission merchant, dealer, or broker shall file with the Chief of the Service an informal complaint. Informal complaints may be made the basis of either a disciplinary complaint, or a claim for damages, or both. If the informal complaint is to be made the basis for a claim for damages, it must be filed within 9 months after the cause of action accrues; if the informal complaint is not to be made the basis of a claim for damages, it may be filed at any time within 2 years after the violation of the law occurred: *Provided, however*, That the 2-year limitation herein prescribed shall not apply to flagrant or repeated violations of the act.

(2) *Form and contents*. Informal complaints may be made by telegraph, by letter, or by a preliminary statement of facts, setting forth the essential details of the transaction complained of. So far as practicable, every such informal complaint should state such of the following items as may be applicable:

- (i) The name and address of each person and of his agent, if any, representing him in the transaction involved;
- (ii) Quantity and quality or grade of each kind of produce shipped;
- (iii) Date of shipment;
- (iv) Car initial and number, if carlot;
- (v) Shipping and destination points;
- (vi) If a sale, state: Sale price; amount actually received;
- (vii) If a consignment, state: Reported proceeds; gross; net; date;
- (viii) Amount of damages claimed, if any; and
- (ix) Statement of other material facts, including terms of contract.

(3) *Attachments*. The informal complaint should, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accounts sales, and any special contracts or agreements.

(b) *Investigation and disposition of informal complaints*. Upon receipt of all the information and supporting evidence submitted by the person filing the informal complaint, the Chief of the Service shall cause such investigation to be

made as, in his opinion, is justified by the facts. If such investigation discloses that no violation of the act has occurred, the matter will be dropped and the person filing the informal complaint will be so advised.

If the statements in the informal complaint seem to warrant such action, the Chief of the Service shall call upon the person complained against to state his side of the controversy in an effort to effect an amicable or informal adjustment of the matters complained of. Should such adjustment not be made and the information secured by correspondence or investigation indicate the probability of a violation of the act, further proceedings will be based upon formal complaint, either for damages filed by the aggrieved person or for disciplinary action filed by the Chief of the Service or by any employee (of the Division) to whom the Chief of the Service shall have delegated the authority to institute disciplinary proceedings under the act.

(c) *Status of person filing informal complaint*. The person filing an informal complaint shall not be a party to any disciplinary proceeding which may be instituted as a result of the informal complaint, and, except as provided hereinafter in paragraph (b) of § 47.6, such person shall have no legal status in any such proceeding, except as he may be subpoenaed as a witness or his deposition taken without expense to him.*

§ 47.4 *Scope and applicability of rules of practice*. Sections 47.23-47.42, inclusive, of this part shall be applicable to the procedure governing the filing and disposition of formal complaints in reparation proceedings. Sections 47.5-47.22, inclusive, of this part shall be applicable to the procedure governing the filing and disposition of formal complaints and other moving papers instituting disciplinary proceedings.*

Rules Applicable to Disciplinary Proceedings

§ 47.5 *Stipulations and consent orders*. (a) At any time prior to the issuance of the moving paper, the Secretary, in his discretion, may enter into a stipulation with the prospective respondent, whereby the latter admits the material facts and agrees to discontinue the acts or practices which are intended to be set up as violative of the act. Such stipulations shall be admissible as evidence of such acts and practices in any subsequent proceeding against such person before the Secretary.

(b) At any time after the issuance of the moving paper and prior to the hearing in any proceeding, the Secretary, in his discretion, may allow the respondent to consent to an order. In so consenting, the respondent must submit, for filing in the record, a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the

Secretary may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearing.*

§ 47.6 *Formal complaints and other moving papers*—(a) *Filing; service; and number of copies*. If the procedure described in paragraph (b) of § 47.3 of this part fails to effect an amicable or informal adjustment of the matters complained of and indicates the probability of a violation of the act, a formal complaint or other form of moving paper shall be filed, in triplicate, with the hearing clerk, who shall promptly serve a true copy thereof upon the respondent, in the manner provided in § 47.22.

(b) *Who may file*. Disciplinary proceedings may be instituted only upon moving papers filed by the Chief of the Service (or by an employee of the Division to whom the Chief of the Service shall have delegated the authority to institute such proceedings), acting either as a result of the informal complaint procedure hereinbefore provided or on his own motion: *Provided*, That, if the Chief of the Service should so determine, disciplinary proceedings may be instituted upon formal complaints or other forms of moving papers filed by an officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory.

(c) *Contents*. A moving paper shall state briefly and clearly the allegations of fact which constitute a basis for the proceeding and shall specify with particularity the matters or things in issue. Moving papers shall not include charges, implied charges, or requirements phrased generally in the words of the act, but the words of the act may be identified and quoted or used in preliminary recitals. Moving papers which propose to deny applications, petitions, or requests shall specify the reason for denial and shall, so far as practicable, contain suggestions as to further procedures or alternatives available to the persons involved.

(d) *Amendments*. At any time prior to the close of the hearing, the moving paper may be amended; but, in case of an amendment adding new provisions, the hearing shall, at the request of the respondent, be adjourned for a period not exceeding 15 days. Amendments subsequent to the first amendment or subsequent to the filing of an answer by the respondent may be made only with leave of the examiner or with the written consent of the adverse party.*

§ 47.7 *Docket number*. Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk, and thereafter the proceeding shall be referred to by such number.*

§ 47.8 *Examiners*—(a) *Designation and assignment*. The Secretary will from time to time, designate employees of the Department to serve as examiners in proceedings under the act. No examiner shall be assigned to serve in any proceeding who (1) has any pecuniary

interest in any matter or business involved in the proceeding, (2) is related within the third degree by blood or marriage to any of the persons involved in the proceeding, or (3) has participated in the investigation preceding the institution of the proceeding or in the determination that it should be instituted or in the preparation of the moving paper or in the development of the evidence to be introduced therein.

(b) *Disqualification of examiner.* Any party may file with the hearing clerk a timely affidavit of disqualification of the examiner, which shall set forth with particularity the grounds of alleged disqualification. After such investigation or hearing as the Secretary shall deem necessary, he may find the affidavit without merit or may direct that another examiner be assigned to the proceeding. Where the affidavit is found without merit, the affidavit, any record made thereon, and the finding and order of the Secretary shall be made a part of the record.

An examiner shall ask to be withdrawn from any proceeding in which he deems himself disqualified for any reason.

(c) *Status and conduct.* In the discharge of his duties in connection with the proceeding to which he has been assigned, the examiner shall be subject to the direction and control of the Secretary only, although the examiner may avail himself of the advice of the Solicitor on questions of law or procedure. He shall conduct the proceeding in a fair and impartial manner and shall not discuss *ex parte* the merits of the proceedings with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(d) *Powers.* Subject to review by the Secretary, as provided elsewhere in this part, the examiner, in any proceeding assigned to him, shall have power to:

- (1) rule upon motions and requests;
- (2) set the time and place of hearing, adjourn the hearing from time to time, and change the time and place of hearing;
- (3) administer oaths and affirmations and take affidavits;
- (4) issue subpoenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;
- (5) summon and examine witnesses and receive evidence;
- (6) take or order, under the facsimile signature of the Secretary, the taking of depositions;
- (7) admit or exclude evidence;
- (8) hear oral argument on facts or law;
- (9) do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the proceeding.

(e) *Who may act in absence of examiner.* In case of the absence, illness, resignation, or death of the examiner

who has been assigned to a proceeding, the powers and duties to be performed by him under these rules of practice in this part in connection with such proceeding may, subject to the provisions of paragraph (a) of this section, be assigned to any other employee of the Department whom the Secretary shall have designated to serve as an examiner in proceedings under the act.*

§ 47.9 *The answer—(a) Filing and service.* Within 20 days after service of the moving paper, the respondent may file, in triplicate, with the hearing clerk an answer, signed by the respondent or his attorney: *Provided*, That the Secretary may order that the hearing be held upon the complainant, and any other party of record, in the manner provided in § 47.22 of this part.

(b) *Contents.* Such answer should (1) contain a precise statement of the facts which constitute the grounds of defense, and should specifically admit, deny, or explain each of the allegations of the moving paper unless respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the complaint.

The answer may contain a waiver of hearing.

(c) *Procedure upon admission of facts.* An answer admitting all of the material allegations of fact contained in the moving paper shall constitute a waiver of hearing. Upon such admission of facts, the examiner, without further investigation or hearing, shall prepare his report, in which he shall adopt as his proposed findings of fact the material facts alleged in the moving paper. Unless the parties have waived service of the examiner's report, it shall be served upon them in the manner provided in § 47.22. The parties shall be given an opportunity to file exceptions, and to make oral argument thereon to the Secretary. Any request to make oral argument to the Secretary must be filed in the manner and within the time provided in § 47.19.*

§ 47.10 *Motions and requests—(a) General.* All motions and requests shall be filed with the hearing clerk, except that those made during an oral hearing may be stated orally and made a part of the transcript.

The examiner is authorized to rule upon all motions and requests filed or made prior to the filing of his report with the hearing clerk as hereinafter provided. The Secretary will rule upon all motions and requests filed after that time.

(b) *Motions entertained.* Any motion will be entertained except a motion to dismiss on the pleadings.

The submission or certification of any question to the Secretary prior to the time when the examiner's report is filed with the hearing clerk shall be in the discretion of the examiner.*

§ 47.11 *Oral hearing before examiner—(a) Request for oral hearing.* Any party may request an oral hearing on

the facts by including such request in the moving paper or answer or by a separate request in writing filed with the hearing clerk. Failure by the respondent to request an oral hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing, and any respondent so failing to request an oral hearing will be deemed to have agreed that the proceeding may be decided upon a record formed under the shortened procedure provided for in § 47.17.

Waiver of oral hearing shall not be deemed to be a waiver of the right to make oral argument before the Secretary upon exceptions to the examiner's report. Such argument will be allowed in accordance with the provisions of § 47.19.

(b) *Time and place.* If and when the proceeding has reached the stage where an oral hearing is to be held, the examiner, giving careful consideration to the convenience of the parties, shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of the hearing is made, the examiner shall file with the hearing clerk a notice of such change, which notice shall be served upon the parties, unless it is made during an oral hearing and made part of the transcript.

(c) *Appearances—(1) Representation.* In any proceeding under the act, the parties may appear in person or by counsel or other representative. The Secretary, if represented by counsel, shall be represented by an attorney assigned by the Solicitor of the Department.

Persons who appear as counsel or in a representative capacity at a hearing must conform to the standards of ethical conduct required of practitioners before the courts of the United States. Whenever the Secretary finds, after notice and opportunity for hearing, that a person, who is acting or has acted as counsel or representative for another person in any proceeding before the Secretary, is unfit to act as such representative or counsel, he will order that such person be precluded from acting as counsel or representative in any proceeding under the act. The procedure in such case will be governed by the applicable provisions of these rules of practice in this part.

(2) *Failure to appear.* If any party to the proceeding, after being duly notified, fails to appear at the hearing, he shall be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election whether to present his evidence, in whole or in part, in the form of affidavits or by oral testimony before the examiner.

Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the examiner's report and to file exceptions and make

oral argument before the Secretary with respect thereto, in the manner provided hereinafter.

(d) *Order of proceeding.* Except as may be determined otherwise by the examiner, the moving party shall proceed first at the hearing.

(e) *Evidence—(1) In general.* The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

Any witness may, in the discretion of the examiner, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

The examiner shall exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds of such objections, whereupon an automatic exception will follow if the objection is overruled by the examiner. The transcript shall not include argument or debate thereon except as ordered by the examiner. The ruling of the examiner on any objection shall be a part of the transcript.

Only objections made before the examiner may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted, in the manner provided in and subject to the provisions of § 47.12.

(4) *Affidavits.* Except as is otherwise provided in the rules in this part, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree that affidavits may be used.

(5) *Proof of documents.* A true copy of every written entry in the records of the Department, made by an officer or employee thereof in the course of his official duty, and relevant to the issues involved in the hearing, shall be admissible as prima facie evidence of the facts stated therein, without the production of such officer or employee.

(6) *Exhibits.* Except where the examiner finds that the furnishing of copies is impracticable, a copy of each exhibit, in addition to the original, shall be filed with the examiner for the use of each other party to the proceeding. The examiner shall advise the parties as to the exact number of copies which will be required to be filed and shall make and have noted on the record the proper distribution of the copies.

(7) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical or scientific fact of established character: *Provided*, That the parties shall be given adequate notice, at the hearing or by reference in the examiner's report or tentative order or otherwise, of matters so noticed, and shall be given adequate

opportunity to show that such facts are erroneously noticed.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript *in toto*. In such event, it shall be considered a part of the transcript if the Secretary decides that the examiner's ruling in excluding the evidence was erroneous. The examiner shall not allow the insertion of such evidence *in toto* if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the examiner's ruling in excluding the evidence was erroneous, the hearing shall be reopened to permit the taking of such evidence.

(f) *Oral argument before examiner.* In disciplinary proceedings, oral argument before the examiner shall be allowed unless the examiner finds that the denial of such argument will not deprive the parties of an adequate opportunity for oral argument subsequently in the proceeding. Such argument may be limited by the examiner to any extent that he finds necessary for the expeditious disposition of the proceeding.

(g) *Transcript.* If a copy of the transcript is desired by any person, such copy may be obtained upon written application filed with the reporter before the close of the hearing, or, thereafter, with the hearing clerk, and upon the payment of fees at the rate of ten cents a page, double spacing, or twenty cents a page, single spacing, as provided in the General Regulations of the Department.*

§ 47.12 *Depositions—(a) Application for taking deposition.* Upon the application of a party to the proceeding, the examiner may, at any time after the filing of the moving paper, order, under the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing and shall set forth: (1) the name and address of the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the "officer"), qualified under these rules to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which should be at least 10 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(b) *Examiner's order for taking deposition.* If the examiner is satisfied that good cause for taking the deposition is present, he may order its taking. The order shall be filed with the hearing clerk and shall be served upon the parties and shall state: (1) the time and place of the examination (which shall not be less than 5 days after the filing of the

order); (2) the name of the officer before whom the examination is to be made; (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(c) *Qualifications of officer.* The deposition shall be made before the examiner, or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths. No deposition shall be made before an officer who is a relative (within the third degree by blood or marriage), employee, attorney, or counsel of any party or who is a relative (within the third degree by blood or marriage) or employee of any attorney or counsel for any party or who is financially interested in the result of the proceeding: *Provided, however*, That an officer who is an employee of the Department and is not a relative of any such party, attorney, or counsel may take depositions in any proceeding under the act.

(d) *Procedure on examination.* The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral cross-examination, parties may transmit written cross-interrogatories to the officer prior to the examination and the officer shall propound such cross-interrogatories to the deponent.

The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the examiner, upon the protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties to the proceeding at least five days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the officer cross-interrogatories at any time prior to the time of the examination.

(e) *Signature by witness.* The transcript of the deposition shall be read to or by the deponent, unless such reading is waived by the parties and the deponent. Any changes which the deponent wishes to make shall be entered upon the deposition by the officer, with a statement of the reasons given by the deponent for such changes. The deposition shall be signed by the deponent, unless the parties by stipulation waive such signing, or unless the deponent is ill or cannot be found or refuses to sign. If the deponent does not sign, the officer shall sign and shall state on the record the reason why

the deponent did not sign. In such case, the deposition shall be as valid as though signed by the deponent, unless the examiner finds that the reason given by the deponent for his refusal to sign requires rejection of the deposition in whole or in part.

(f) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered mail to the hearing clerk.

(g) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section, or in accord with the provisions of the Rules of Civil Procedure of the Courts of the United States, may be used in a proceeding under the act if the examiner finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a greater distance than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has endeavored but has been unable to procure the attendance of the witness by subpoena; or, (5) in any event, upon application and notice that such exceptional circumstances exist as to make it desirable, in the interests of justice and with due regard to the importance of presenting the testimony orally before the examiner, to allow the deposition to be used. If any part of a deposition is put in evidence by a party, any other party may require the production of the remainder, or any other portion, of the deposition.*

§ 47.13 *Subpenas*—(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding, including the Department, may, by subpoena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the examiner, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpoena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the examiner upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpoena addressed to the

person to be served at his or its last known principal place of business or residence. Proof of service may be made by the return of service on the subpoena by the United States Marshal or his deputy; or, if served by an individual other than a United States Marshal or his deputy, by an affidavit or certificate of such person stating that he personally served a copy of the subpoena upon the person named therein; or, if service was by registered mail, by an affidavit or certificate made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt: *Provided*, That, where the subpoena is issued on behalf of the Secretary, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed; the original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.*

§ 47.14 *Fees of witnesses.* Witnesses summoned before the examiner or the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.¹ Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.*

§ 47.15 *Prehearing conferences.* In any proceeding in which it appears that such procedure will expedite the proceeding, the examiner, at any time prior to the commencement of the oral hearing, may request the parties or their counsel to appear at a conference before him to consider (1) the simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (4) the limitation of the number of expert or other witnesses; and (5) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the examiner shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the examiner may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The examiner shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the examiner shall submit

a written summary for the record if any action is taken.*

§ 47.16 *The examiner's report*—(a) *Filing the transcript of evidence.* As soon as practicable after the close of the hearing, the reporter shall transmit to the hearing clerk the transcript of the testimony and the exhibits introduced in evidence at the hearing. Immediately thereafter, the hearing clerk will send a copy of the transcript to each party who shall have filed an application for a copy, as provided in paragraph (g) of § 47.11, and will advise each party to the proceeding as to the date on which the transcript was filed with the hearing clerk.

(b) *Suggested findings of fact, conclusions, and order.* Within 10 days after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk suggested findings of fact, conclusions, and order, based solely upon the evidence of record, and briefs in support thereof.

(c) *Examiner's report.* The examiner, within a reasonable time after the termination of the period allowed for the filing of suggested findings of fact, conclusions, and orders, and briefs in support thereof, shall prepare, upon the basis of the evidence received at the hearing, and shall file with the hearing clerk, his report, a copy of which shall be served by the hearing clerk upon each of the parties.

(d) *Exceptions.* Within 20 days after receipt of the examiner's report, the parties may file exceptions to the report. Any party who desires to take exception to any matter set out in the report shall transmit his exceptions in writing to the hearing clerk, referring to the relevant pages of the transcript, and suggesting a corrected finding of fact, conclusion, or order. Within the same period of time, each party shall transmit to the hearing clerk a brief statement in writing concerning each of the objections taken to the action of the examiner at the hearing, as provided in § 47.11 hereof, upon which the party wishes to rely, referring, where relevant, to the pages of the transcript. A party, if he files exceptions or a statement of objections, shall state in writing whether he desires to make an oral argument thereon before the Secretary; otherwise, he shall be deemed to have waived such oral argument.

§ 47.17 *The shortened procedure*—(a) *Consent of parties.* Whenever it appears to the examiner who is assigned to a proceeding that the proceeding can be more expeditiously handled under the informal procedure provided for in this section, he shall suggest to the parties that they consent to the use of such procedure. Except where oral hearing has been waived by failure to request it in proper time or otherwise, parties are free to consent to such procedure if they choose; declination of consent will not affect or prejudice the rights or interests of any party. A party, if he has not waived oral hearing, may consent to the

¹ Words in italics are quoted virtually verbatim from sec. 13 (e) of the act, 46 Stat. 536; 7 U. S. C., sec. 499m (e).

use of the shortened procedure on the condition that the statements of fact be submitted in the form of depositions rather than affidavits. In such case, if the other parties agree, depositions shall be required to be filed in lieu of affidavits. If any party who has not waived oral hearing does not consent to the use of the shortened procedure, the proceeding will be set for oral hearing. The request that the shortened procedure be used need not originate with the examiner; any party may address a request to the examiner asking that the shortened procedure be used. The examiner, in his suggestion to the parties, will set a short period of time in which the parties may indicate their consent to the shortened procedure; at the end of that period the examiner will notify the parties that the shortened procedure will or will not be used. All requests, suggestions, and notices mentioned in this section shall be filed with the hearing clerk.

(b) *Complainant's opening statement.* Within 20 days after receipt of notice that the shortened procedure will be used, the complainant shall file, in triplicate, in support of the complaint, an opening statement of the facts. A copy of such document shall be served promptly by the hearing clerk upon the respondent.

(c) *Respondent's answering statement.* Within 20 days after receipt of the complainant's opening statement, the respondent shall file, in triplicate, in support of his answer, an answering statement of the facts. A copy of the answering statement shall be served promptly by the hearing clerk upon the complainant.

(d) *Complainant's statement in reply.* Within 10 days after receipt of the answering statement, the complainant may file, in triplicate, a statement in reply, which shall be confined strictly to replying to the facts and arguments set forth in the answering statement.

(e) *Contents of statements.* As used in this section, the term "statement" includes (1) statements of fact, signed and sworn to by persons having knowledge of those facts; (2) any documents filed as a part of the proof of the alleged facts (which documents shall be properly identified by verified statements in the statement filed or otherwise authenticated in such a manner that they would be admissible in evidence at an oral hearing under these rules of practice); and (3) briefs containing argument to sustain the contentions of the party submitting the statement. When practicable, the documents which constitute the record of any transaction in dispute should be made a part of the statement.

(f) *Verification.* Any facts stated in the statement must be sworn to (before a person legally authorized to administer oaths or before a person designated by the Secretary for the purpose) by a person who states in the affidavit that he has actual knowledge of the facts.

Except under unusual circumstances, which shall be set forth in the affidavit, any such person shall be one who would appear as a witness if an oral hearing were held. The original of each document must show the signature, capacity, and impression seal (if the officer is required by law to have a seal) of the officer administering the oath and the date thereof. Copies must bear a notation that the original shows the data required in this respect. If a party elects to do so, he may file his statement of facts in the form of depositions rather than affidavits. Depositions filed under the shortened procedure, whether filed as a result of a requirement in the consent to the shortened procedure or voluntarily, shall conform to the provisions set forth in § 47.12 of this part.

(g) *Stipulations.* In addition to or in lieu of such statements, the parties may file with the hearing clerk stipulations of fact signed by the parties or their representatives. Such stipulations shall become a part of the record. The stipulations must be filed with the hearing clerk within 20 days after notice that the shortened procedure will be used; or, if the complainant's opening statement is filed, within 20 days after the filing of such statement; or, if an answering statement is filed, within 15 days after the filing thereof; or, if a statement in reply is filed, within 15 days after the filing thereof.

(h) *Waiver of right to file.* Failure to file, within the time prescribed, any statement or stipulation required or authorized under this section shall constitute a waiver of the right to file such statement or stipulation. In such case, the examiner may prepare his report and the Secretary may make his final determination upon the evidence contained in the record at the time of such failure to file, except that no determination, other than dismissal of the proceeding, shall be made if the complainant fails to file an opening statement of the facts.

(i) *Examiner's report under the shortened procedure.* Except as otherwise may be directed by the examiner, the filing of the complainant's statement in reply will conclude the presentation of evidence. The examiner will thereupon file with the hearing clerk a notice that the parties may file suggested findings of fact, conclusions, and orders within 10 days after service of such notice. Upon the expiration of the period set for the filing of suggested findings, conclusions, and orders, the examiner will prepare his report, and the same procedure shall be followed thereafter as in proceedings where an oral hearing has been held.

(j) *Assignment for oral hearing.* At the request of any party or upon the examiner's own motion, the proceeding shall be set for oral hearing at any stage of the proceeding prior to the filing of the examiner's report: *Provided*, That, where the party making such request has waived oral hearing by failure to request it in proper time, as provided in § 47.11

hereof, the assignment for oral hearing shall be in the discretion of the examiner.*

§ 47.18 *Transmittal of record.* The hearing clerk, immediately following the period allowed for the filing of exceptions, shall transmit to the Secretary the record of the proceeding. Such record shall include: the pleadings; motions and requests filed, and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any statements filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such suggested findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the hearing; the examiner's report; and such exceptions, statements of objections, and briefs in support thereof as may have been filed in the proceeding.*

§ 47.19 *Argument before Secretary—*
(a) *Oral argument.* Unless a party has included in his exceptions a request for oral argument or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, he shall be deemed to have waived his right to such oral argument.

(b) *Briefs.* The parties may file written briefs either in addition to oral argument or in lieu thereof.

(c) *Scope of argument.* Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or on brief, shall be limited to the issues raised by the exceptions and statement of objections. If the Secretary determines that additional issues should be argued, counsel for the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate argument on all the issues to be argued.*

§ 47.20 *Preparation and issuance of order—*(a) *Preparation of order.* As soon as practicable after the receipt of the record from the hearing clerk, or, in case oral argument was had, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record, shall prepare his order in the proceeding. If an oral argument was held, the order shall be prepared by and shall be issued over the signature of the official who heard such oral argument, unless the parties shall consent to a different arrangement. At no stage of the proceeding between its institution and the issuance of the order shall the Secretary discuss *ex parte* the merits of the proceeding with any person who is connected with the proceeding in an advocative or in an investigative capacity, or with any representative of such person: *Provided*, That the Secretary may discuss the merits of the case with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. Any memorandum or other communication addressed to the Secretary, during the pendency of the proceeding, and re-

lating to the merits thereof, by, or on behalf of, any party shall be regarded as argument made in the proceeding and shall be filed with the hearing clerk, who shall serve a copy thereof upon the opposite party to the proceeding, and opportunity will be given the opposite party to file a reply thereto.

(b) *Issuance of order.* The order, prepared as described in paragraph (a) of this section, shall be issued and served upon the parties as the final order in the proceeding without further procedure: *Provided*, That, if the terms of the order differ substantially from those proposed in the report of the examiner, the Secretary may, if he deems it advisable to do so, direct that a copy of the order be served upon the parties as a tentative order; and, in such event, opportunity shall be given the parties to file exceptions thereto and written arguments or briefs in support of such exceptions. In such case, if no exceptions are filed within 20 days following the service of the tentative order, it shall be issued and served as the final order in the proceeding.*

§ 47.21 *Applications for reopening hearings; for rehearings or rearguments of proceedings; or for reconsideration of orders—(a) Petition requisite—(1) Filing; service.* An application for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the order must be made by petition to the Secretary filed with the hearing clerk, who immediately shall notify and serve a copy thereof upon the other party to the proceeding. Every such petition must state specifically the grounds relied upon.

(2) *Petitions to reopen hearings.* A petition to reopen the hearing for the purpose of taking additional evidence may be filed at any time prior to the issuance of the order. Every such petition must state briefly the nature and purpose of the evidence to be adduced, and must show that such evidence is not merely cumulative.

(3) *Petitions to rehear or reargue proceedings, or to reconsider orders.* A petition to rehear or reargue the proceeding or to reconsider the order must be filed within 15 days after the date of the service of the order. Every such petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions.* Within 20 days following the service of any petition provided for in this section, the other party to the proceeding shall file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce his decision whether to grant or to deny the petition. Unless the Secretary shall determine otherwise, operation of the order shall not be stayed pending the decision to grant or to deny the petition. In the event that any such petition is granted by the Secretary, the applicable

rules of practice, as set out elsewhere herein, shall be followed. A person filing a petition under this section shall be regarded as the moving party or complainant, although he shall be referred to as the complainant or respondent, depending upon his designation in the original proceeding.*

§ 47.22 *Filing; service; extensions of time; additional time for filing; and computation of time—(a) Filing; number of copies.* Except as is provided otherwise herein, all other documents or papers required or authorized by these rules to be filed with the hearing clerk shall be filed in triplicate: *Provided*, That, where there are more than two parties to the proceeding, a sufficient number of copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper, required or authorized under these rules to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the examiner.

(b) *Service; proof of service.* Copies of all such papers shall be served upon the parties by the hearing clerk, by the examiner, by some other employee of the Department, or by a United States Marshal or his deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; or (2) by leaving a copy of the document or paper at the principal office, or place of business or residence of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (3) by registering and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office or place of business. Proof of service hereunder shall be made by the affidavit or certificate of the person who actually made the service: *Provided that*, If the service be made by registered mail, as outlined in (3) above, proof of service shall be made by the return post-office receipt. The affidavit and post-office receipt contemplated herein shall be filed with the hearing clerk, and the fact of filing thereof shall be noted on the docket of the proceeding.

(c) *Extensions of time.* The time for the filing of any document or paper (except an informal complaint) required or authorized under these rules to be filed may be extended by the examiner (before the examiner's report is filed) or by the Secretary (after the examiner's report is filed), if request for such extension of time is made prior to or on the final date allowed for such filing,

and if, in the judgment of the examiner or the Secretary, as the case may be, after notice to and consideration of the views of the other party, there is good reason for the extension.

(d) *Effective date of filing.* Any document or paper required or authorized under these rules to be filed shall be deemed to be filed at the time when it reaches the Department of Agriculture in Washington, D. C.; or, if authorized to be filed with an officer or employee of the Department at any place outside the District of Columbia, it shall be deemed to be filed at the time when it reaches the office of such officer or employee.

(e) *Additional time for filing.* The time for the filing of any document or paper (except an informal complaint) required or authorized under these rules to be filed shall be five days longer when the party resides or has his or its principal place of business at any place west of 104° west longitude.

(f) *Computation of time.* Sundays and holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.*

Rules Applicable to Reparation Proceedings

§ 47.23 *Formal complaints—(a) Filing; contents; number of copies.* If the procedure provided in paragraph (b) of § 47.3 of these rules fails to effect an amicable or informal adjustment and indicates the probability of a violation of the act, the person filing the informal complaint shall file with the Division a formal complaint, setting forth the information and accompanied by the papers indicated in subparagraphs (2) and (3) of paragraph (a) of said § 47.3, including a statement of the amount of damages claimed, with the basis therefor, and the method of determination. Three copies shall be furnished for filing and service on the respondent. If there is more than one respondent, a further copy shall be furnished for each additional respondent.

(b) *Bond required if complainant is non-resident.* If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or in double the amount of the claim with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fees for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary against

the complainant, or any counterclaim by respondent: *Provided*, That the furnishing of a bond shall be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

(c) *Service upon respondent*. If, upon receipt by the Division of the formal complaint, the complaint is found to be in proper form, a copy thereof shall be served upon the respondent. Service shall be made by the Division and proof of service shall be obtained in the manner provided in paragraph (b) of § 47.22 of this part.

(d) *Amendments*. At any time prior to the close of the hearing, the complaint may be amended; but, in case of an amendment adding new provisions, the hearing shall, if the respondent so requests, be adjourned for a period not exceeding 15 days: *Provided*, That, if the amendment introduces a new or different cause of action, it must be filed within 9 months after the cause of action accrued. Amendments subsequent to the first amendment or subsequent to the filing of an answer by the respondent may be made only with leave of the examiner or with the written consent of the adverse party: *Provided*, That, if no examiner has been assigned to the proceeding, the amendment may be permitted by leave of the Chief of the Service.*

§ 47.24 *Service of report of investigation*. At the same time that it serves upon the respondent a copy of the formal complaint, the Division shall file with the hearing clerk and shall serve upon each of the parties a copy of the records comprising the file of the case made by the Division in connection with its investigation of the informal complaint. Any such information shall be considered by the Secretary as part of the evidence in the proceeding: *Provided*, That either party shall be permitted to submit evidence in rebuttal in the same manner as is provided in these rules for the submission of evidence in general.*

§ 47.25 *The answer*—(a) *Filing and service*. Within 20 days after service of the complaint, the respondent shall file, with the Division, an answer, in triplicate, signed by the respondent or his attorney. The answer, or a true copy thereof, shall be served upon the complainant by the Division, in the manner provided in paragraph (b) of § 47.22 of this part.

(b) *Contents*. Such answer shall contain (1) a precise statement of the facts which constitute the grounds of defense, including any set-off or counterclaim, and shall specifically admit, deny, or explain each of the allegations of the complaint, unless respondent is without knowledge, in which case the answer shall so state; or (2) a statement that the respondent admits all of the allegations of the complaint.

The answer may contain a waiver of hearing.

(c) *Failure to file answer; effect of*. Failure to file an answer, within the 20-day period aforesaid, shall constitute a waiver of hearing on the facts and shall be deemed to be an admission of the allegations of the complaint.

(d) *Procedure upon admission of facts*. An answer admitting all of the material allegations of fact contained in the complaint and setting up no counterclaim or set-off shall constitute a waiver of hearing. If, in such case, or in the event of a failure to answer, the respondent, prior to the expiration of the period for filing the answer, has requested in writing an opportunity to argue the question of whether the facts alleged constitute the violation of law charged, he shall be afforded a period of 15 days in which to file a brief, setting forth such argument. If no request for argument is filed by the respondent prior to the expiration of the period for the filing of the answer, the examiner shall forward the record to the Secretary for his final order.*

§ 47.26 *The reply*—(a) *Filing and service*. If the answer asserts a counterclaim or a set-off, the complaining party, within 10 days after receipt of the answer, may file a reply with the Division. The reply, or a true copy thereof, shall be served by the Division upon the respondent in the manner provided in paragraph (b) of § 47.22 of this part.

(b) *Contents*. The reply shall be confined strictly to the matters alleged in the counterclaim or set-off set up in the answer. It shall contain a precise statement of the facts which constitute the grounds of defense to the counterclaim or set-off and shall specifically admit, deny, or explain each of the allegations of the answer constituting such counterclaim or set-off, unless the complainant is without knowledge, in which case the reply shall so state.

(c) *Failure to file reply*. Failure to file a reply shall not be deemed a waiver of hearing or an admission of the allegations contained in the answer. If no reply is filed, the allegations of the answer will be regarded as denied.

§ 47.27 *Docketing of proceeding*. Immediately following the receipt of the answer, or the reply (if the answer asserts a counterclaim or a set-off), or following the expiration of the period of time heretofore prescribed for the filing of the answer or of the reply, the Division shall transmit all of the papers which have been filed in the proceeding to the hearing clerk, who shall assign a docket number to the proceeding, and thereafter the proceeding shall be referred to by such number.*

§ 47.28 *Examiners*—(a) *Designation and assignment*. The Secretary will, from time to time, designate employees of the Department to serve as examiners in proceedings under the act. No examiner shall be assigned to serve in any proceeding who (1) has any pecuniary in-

terest in any matter of business involved in the proceeding, or (2) is related within the third degree by blood or marriage to any of the persons involved in the proceeding.

(b) *Disqualification of examiners*. The provisions of paragraph (b), § 47.8 of this part shall be applicable in reparation proceedings.

(c) *Powers*. The provisions of paragraph (d) of § 47.8 of this part shall be applicable in reparation proceedings.*

§ 47.29 *Intervention*. At any time after the institution of a proceeding, and before it has been submitted to the Secretary for final consideration, the Secretary or the examiner may, upon petition in writing, and for good cause shown, permit any person to intervene therein. The petition shall state with preciseness and particularity: (1) the petitioner's relationship to the matters involved in the proceeding; (2) the nature of the material he intends to present in evidence; (3) the nature of the argument he intends to make; and (4) any other reason that he should be allowed to intervene.

§ 47.30 *Motions and requests*. The examiner is authorized to rule upon all motions and requests filed in the proceeding prior to his submission of the record to the Secretary. All motions and requests made after the formal filing of the proceeding with the hearing clerk shall be filed with the hearing clerk. Submission or certification of any question to the Secretary prior to the close of the hearing shall be in the discretion of the examiner.*

§ 47.31 *Prehearing conferences*. The provisions of § 47.15 of this part shall be applicable in reparation proceedings.

§ 47.32 *Oral hearing before the examiner*—(a) *When permissible*. Where the amount of damages claimed does not exceed \$500, an oral hearing shall not be held, unless deemed necessary or desirable by the Chief of the Service, or unless granted upon application of complainant or respondent setting forth the peculiar circumstances making an oral hearing necessary for a proper presentation of the case. In lieu of an oral hearing in any proceeding where the amount of damages claimed does not exceed \$500, the proceeding shall be decided upon a record formed under the shortened procedure provided in § 47.37.

Where the amount of damages claimed is in excess of \$500, the procedure provided in this section (except as provided in subparagraph (2) of paragraph (a) of § 47.37) shall be applicable.

(b) *Request for hearing*. Any party may request an oral hearing on the facts by including such request in the complaint, answer, or reply, or by a separate request filed with the Division. Failure to request an oral hearing within the time allowed for filing of the reply, or (if no reply is allowed) within 10 days after the expiration of the time allowed for filing an answer, shall constitute a waiver of such hearing, and any party so failing to request an oral hearing will

be deemed to have agreed that the proceeding may be decided upon a record formed under the shortened procedure provided in § 47.37.

(c) *Time and place.* The provisions of paragraph (b) of § 47.11 of this part shall be applicable in reparation proceedings.

(d) *Appearances—(1) Representation.* The provisions of subparagraph (1) of paragraph (c) of § 47.11 of this part shall be applicable in reparation proceedings, except that nothing contained in this paragraph shall be construed to require the complainant to appear either in person or by counsel or other representative; instead, he may be permitted to submit his evidence in the form of depositions, taken in the manner provided in § 47.12.

(2) *Failure to appear.* If any party to the proceeding, after being duly notified, fails to appear at the hearing, he shall be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election whether to present his evidence, in whole or in part, in the form of affidavits or by oral testimony before the examiner. Failure to appear at the hearing shall not be deemed to be a waiver of the right to file suggested findings of fact, conclusions, and order and briefs in support thereof.

(e) *Order of proceeding.* The complainant shall proceed first at the hearing and the burden of proof shall be upon the complainant, except that a party asserting a set-off or counterclaim shall have the burden of proof on such issue.

(f) *Evidence.* The provisions of paragraph (e) of § 47.11 of this part shall be applicable in reparation proceedings.

(g) *Oral argument before examiner.* In reparation proceedings, the examiner may permit the parties or their counsel to argue orally at the hearing or at some other time prior to the final order. Such argument may be limited by the examiner to any extent that he finds necessary for the expeditious or proper disposition of the case.

(h) *Transcript.* The provisions of paragraph (g) of § 47.11 of this part shall be applicable in reparation proceedings.*

§ 47.33 *Depositions.* The provisions of § 47.12 of this part shall be applicable in reparation proceedings.*

§ 47.34 *Subpenas.* The provisions of § 47.13 of this part shall be applicable in reparation proceedings.*

§ 47.35 *Fees of witnesses.* The provisions of § 47.14 of this part shall be applicable in reparation proceedings.*

§ 47.36 *The examiner's report—(a) Filing the transcript of evidence.* As soon as practicable after the close of the hearing, the reporter shall transmit to the hearing clerk the transcript of the testimony and the exhibits introduced in evidence at the hearing. Immediately thereafter, the hearing clerk shall send a copy of the transcript to each

party to the proceeding, who shall have filed an application for a copy as provided in paragraph (h) of § 47.32 hereof, and will advise each party to the proceeding as to the date on which the transcript was filed with the hearing clerk.

(b) *Suggested findings of fact, conclusions, and order.* Within 10 days after the filing of the transcript with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk suggested findings of fact, conclusions, and order, based solely upon the evidence of record, and a statement of objections made to the rulings of the examiner at the hearing. The suggested findings, conclusions, and order and the statements of objections may be accompanied by briefs in support thereof.

(c) *The examiner's report.* Within a reasonable time after the termination of the period allowed for the filing of suggested findings of fact, conclusions, and orders, and briefs in support thereof, the examiner, with the assistance and collaboration of such employees of the Department as may be assigned for the purpose, shall prepare, upon the basis of the evidence received at the hearing, and shall file with the hearing clerk, a report. Such report shall be prepared in the form of a final order for the signature of the Secretary, but shall not be served upon the parties, unless and until it shall have been signed by the Secretary, as hereinafter provided.*

§ 47.37 *Shortened procedure—(a) Definition.* The shortened or informal procedure described in this section shall, whenever it is applicable as provided in paragraph (b) of this section, take the place and serve in lieu of the formal or oral hearing procedure hereinbefore provided. Under the shortened procedure, parties will be permitted to submit written or documentary proof in support of the complaint or the answer, as the case may be, in the form of verified statements of fact, depositions, supporting exhibits, and other records comprising the file in the case made by the Division in connection with its investigation of the informal complaint.

(b) *When applicable—(1) Where damages claimed do not exceed \$500.* The shortened or informal procedure provided for in this section shall (except as provided in paragraph (a) of § 47.32 hereof) be used in all reparation proceedings in which the amount of damages claimed (either in a complaint or in a counterclaim) does not exceed \$500.

(2) *Where damages claimed exceed \$500.* In any proceeding in which the amount of damages claimed (either in the complaint or in the counterclaim) is greater than \$500, the examiner, whenever he is of the opinion that the proceeding can be more expeditiously handled under the informal procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Except where oral hearing has been waived by failure

to request it in proper time or otherwise, parties are free to consent to such procedure if they choose; declination of consent will not affect or prejudice the rights or interests of any party. A party, if he has not waived oral hearing, may consent to the use of the shortened procedure on the condition that the statements of fact be submitted in the form of depositions rather than affidavits. In such case, if the other parties agree, depositions shall be required to be filed in lieu of affidavits. If any party who has not waived oral hearing does not consent to the use of the shortened procedure, the proceeding will be set for oral hearing. The request that the shortened procedure be used need not originate with the examiner; any party may address a request to the examiner asking that the shortened procedure be used. The examiner, in his suggestion to the parties, will set a short period of time in which the parties may indicate their consent to the shortened procedure; at the end of that period the examiner will notify the parties that the shortened procedure will or will not be used. All requests, suggestions, and notices mentioned in this section shall be filed with the hearing clerk.

(c) *Complainant's opening statement.* Within 20 days after receipt of notice that the shortened procedure will be used, the complainant may file, in triplicate, in support of the complaint, an opening statement of facts. If he so chooses, however, the complainant may rely upon the complaint and the papers filed in connection therewith. The hearing clerk shall serve promptly a copy of the opening statement upon the respondent.

(d) *Respondent's answering statement.* Within 20 days after the receipt of the complainant's opening statement, the respondent may file, in triplicate, in support of his answer, an answering statement of facts. If he so chooses, however, the respondent may rely upon his answer and the papers which he has filed in connection therewith. The hearing clerk shall serve promptly a copy of the answering statement upon the complainant.

(e) *Complainant's statement in reply.* Within 10 days after receipt of the answering statement, the complainant may file, in triplicate, a statement in reply, which shall be confined strictly to replying to the facts and arguments set forth in the answering statement.

(f) *Contents of statements.* As used in this section, the term "statement" includes (1) statements of fact, signed and sworn to by persons having knowledge of those facts; (2) any documents filed as a part of the proof of the alleged facts (which documents shall be properly identified by verified statements in the statement filed or otherwise authenticated in such a manner that they would be admissible in evidence at an oral hearing under these rules of practice); and (3) briefs containing argument to sustain the contentions of the party submitting the

statement. When practicable, the documents which constitute the record of any transaction in dispute should be made a part of the statement.

(g) *Verification.* Any facts set forth in the statement must be sworn to (before a person legally authorized to administer oaths or before a person designated by the Secretary for the purpose) by a person who states in the affidavit that he has actual knowledge of the facts. Except under unusual circumstances, which shall be set forth in the affidavit, any such person shall be one who would appear as a witness if an oral hearing were held. The original of each document must show the signature, capacity, and impression seal (if the officer is required by law to have a seal) of the officer administering the oath and the date thereof. Copies must bear a notation that the original shows the date required in this respect. If a party elects to do so, he may file his statement of facts in the form of depositions rather than affidavits. Depositions filed under the shortened procedure, whether filed as a result of a requirement in the consent to the shortened procedure or voluntarily, shall conform to the provisions set forth in § 47.12 of this part.

(h) *Stipulations.* In addition to or in lieu of such statements, the parties may file with the hearing clerk stipulations of fact signed by the parties or their representatives. Such stipulations shall become a part of the record. The stipulations must be filed with the hearing clerk within 20 days after notice that the shortened procedure will be used; or, if the complainant's opening statement is filed, within 20 days after the filing of such statement; or, if an answering statement is filed, within 15 days after the filing thereof; or, if a statement in reply is filed, within 15 days after the filing thereof.

(i) *Waiver of right to file.* Failure to file, within the time prescribed, any statement or stipulation required or authorized under this section shall constitute a waiver of the right to file such statement or stipulation. In such case, the examiner may prepare his report and the Secretary may make his final determination upon the evidence contained in the record at the time of such failure to file.

(j) *Suggested findings of fact, conclusions, and order.* Except as may be otherwise directed by the examiner, the filing of the complainant's statement in reply will conclude the presentation of evidence. The examiner shall thereupon file with the hearing clerk a notice that the parties may file suggested findings of fact, conclusions, and orders within 10 days after the service of such notice. Within a reasonable time after the expiration of the period set for the filing of suggested findings of fact, conclusions, and orders, the Secretary will issue his order, based upon the evidence of record.

(k) *Assignment for oral hearing.* At the request of any party or upon the ex-

aminer's own motion, the proceeding shall be set for oral hearing at any stage of the proceeding prior to the filing of the examiner's report: *Provided*, That where the party making such request has waived oral hearing by failure to request it in proper time, as provided in § 47.11 hereof, the assignment for oral hearing shall be in the discretion of the examiner. This paragraph shall not be applicable where the damages claimed do not exceed \$500.*

§ 47.38 *Transmittal of record.* The hearing clerk, immediately after the expiration of the period for the filing of suggested findings of fact, conclusions, and order and briefs in support thereof, shall transmit to the Secretary the record of the proceedings. Such record shall include: the pleadings; motions and requests filed, and rulings thereon; the Division's report of investigation; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such suggested findings of fact, conclusions, and order and briefs as may have been filed in connection with the hearing; such statements of objections and briefs in support thereof as may have been filed in the proceeding; and the examiner's report.*

§ 47.39 *Argument before the Secretary—(a) Oral argument.* There shall be no right to oral argument in reparation proceedings other than that provided in paragraph (g) of § 47.32.

(b) *Briefs.* The Secretary will consider any suggested findings of fact, conclusions, and orders, statements of objections, and briefs filed in the proceeding. Briefs in addition to those filed in support of suggested findings, conclusions, and order and statements of objections may be filed only with leave of the Secretary.*

§ 47.40 *Issuance of order.* As soon as practicable after the receipt of the record from the hearing clerk, the Secretary, upon the basis of and after due consideration of the record, will issue his order in the proceedings. Unless he disagrees with the order as drafted for his signature by the examiner as heretofore provided in paragraph (c) of § 47.36, the Secretary will issue as his order the order so prepared by the examiner. If the Secretary deems it advisable to do so, he may direct that a copy of the order be served upon the parties as a tentative order; and, in such event, opportunity shall be given the parties to file exceptions thereto and written argument or briefs in support of such exceptions. In such case, if no exceptions are filed within 20 days following the service of the tentative order, it shall be issued and served as the final order in the proceeding.*

§ 47.41 *Applications for reopening hearings; for rehearings or rearguments of proceedings; or for reconsideration of orders—(a) Petition requisite—(1)*

Filing; service. An application for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the order must be made by petition to the Secretary filed with the Division, who shall serve a copy thereof upon the other party to the proceeding. Every such petition must state specifically the grounds relied upon.

(2) *Petitions to reopen hearings.* A petition to reopen the hearing for the purpose of taking additional evidence may be filed at any time prior to the issuance of the order. Every such petition must state briefly the nature and purpose of the evidence to be adduced, and must show that such evidence is not merely cumulative.

(3) *Petitions to rehear or reargue proceedings, or to reconsider orders.* A petition to rehear or reargue the proceeding or to reconsider the order must be filed within 15 days after the date of the service of the order. Every such petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions.* Within 20 days following the service of any petition provided for in this section, the other party to the proceeding shall file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce his decision whether to grant or to deny the petition. Unless the Secretary shall determine otherwise, operation of the order shall not be stayed pending the decision to grant or to deny the petition. In the event that any such petition is granted by the Secretary, the applicable rules of practice, as set out elsewhere herein, shall be followed. A person filing a petition under this section shall be regarded as the moving party or complainant, although he shall be referred to as the complainant or respondent, depending upon his designation in the original proceeding.*

§ 47.42 *Filing; service; extensions of time; additional time for filing; and computation of time.* The provisions of § 47.22 of this part shall be applicable to reparation proceedings: *Provided*, That any complaint filed with any employee of the Department at any regional or field office of the Service shall be deemed to be filed with the Secretary at the time when the complaint is filed at the regional or field office.*

PART 48—REGULATIONS UNDER THE PRODUCE AGENCY ACT

DEFINITIONS

Sec.

- 48.1 Meaning of words.
48.2 Terms defined.

ADMINISTRATION

- 48.3 Chief of service.

CERTIFICATES OF INSPECTION

- 48.4 Certificates; when issued.
48.5 Certificate; contents.
48.6 Application for inspection; how made; contents.
48.7 Copy of certificate to chief of Service.

COMPLAINTS

Sec.

48.8 Filing of complaints.

Definitions

§ 48.1 *Meaning of words.* Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.*

*§§ 48.1 to 48.8, inclusive, issued under the authority contained in 44 Stat. 1355; 7 U.S.C. 491-497.

§ 48.2 *Terms defined.* For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) *The Produce Agency Act, or the Act.* An Act of Congress entitled "An Act to prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others, and to require them truly and correctly to account for all farm produce received by them," approved March 3, 1927 (44 Stat. 1355; 7 U.S.C. 491-497).

(b) *Person.* Individual, firm, association or corporation.

(c) *Secretary.* The Secretary of Agriculture of the United States.

(d) *Chief of service.* The Chief of the Agricultural Marketing Service of the United States Department of Agriculture.

(e) *Good and sufficient cause.* This term with respect to destroyed, abandoned, discarded, or dumped produce, shall be deemed to mean that the produce so dealt with had no commercial value, or that some other legal justification for so dealing with such produce existed, such as an order of condemnation by a health officer or definite authority from the shipper.

(f) *Truly and correctly to account.* This term means the prompt rendering of a true and correct itemized statement of the sale or other disposition of any consignment of produce in interstate commerce with full payment of the gross amount for which such produce is sold, less the proper, usual, or agreed selling charges and all other expenses necessarily and actually incurred or agreed to in the handling thereof.*

Administration

§ 48.3 *Chief of service.* The Chief of Service shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of the Act and the rules and regulations in this part.

Certificates of Inspection

§ 48.4 *Certificates; when issued.* (a) The following classes of persons are hereby designated to make investigations regarding the quality and condition of produce received in interstate commerce or in the District of Columbia, and to

issue certificates as to the quality and condition of such produce which is to be destroyed, abandoned, discarded as refuse, or dumped, upon application of any person shipping, receiving or financially interested in such produce:

(1) Any authorized inspector of the United States Department of Agriculture under the farm products inspection law or the Perishable Agricultural Commodities Act.

(2) Any health officer or food inspector of any State, county, parish, city, or municipality.

(3) Any two disinterested persons engaged at the time of the investigation, and for a period of at least one year next prior thereto, in the handling of the same general kind or class of produce as that to be inspected, and having no financial interest therein or in the business of any person financially interested therein, and unrelated by blood or marriage to such person. Any certificate issued by two disinterested persons under this section must include a statement that they possess the above qualifications.

(b) Investigation and certification as to the quality and condition of produce shall be made by two disinterested parties only when inspectors of the classes designated (1) and (2) are not available.*

§ 48.5 *Certificate; contents.* Any certificate under the Act must identify the particular lot of produce inspected, give the date upon which the inspection was made; the approximate quantity of the produce, the name and address of the agent handling the same, the fee, if any, charged therefor, and shall state the quality and condition of such produce and that it was without commercial value at the time of the inspection.*

§ 48.6 *Application for inspection; how made; contents.* Application for inspection may be filed with the person requested to make such inspection or with his office. It may be made in writing, orally, by telegraph or by telephone. If made orally, the person requested to make such inspection may require that it be confirmed by applicant in writing or by telegraph. The application must show the name and address of the shipper, the name and address of the applicant, the location and description of the produce, with marks, brands, or other specific identification if practicable.*

§ 48.7 *Copy of certificate to Chief of Service.* Any person issuing a certificate under the rules and regulations in this part must mail a copy of the certificate promptly to the Chief of Service.*

Complaints

§ 48.8 *Filing of complaints.* Any person having reason to believe that the Act has been violated should submit all available facts with respect thereto to the Chief of Service for investigation and appropriate action.*

This order supersedes all previous orders of the Secretary of Agriculture promul-

gating rules and regulations under the Perishable Agricultural Commodities Act, 1930, or the Act of March 3, 1927 (44 Stat. 1355).

Done at Washington, D. C., this 16th day of July, 1941. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

GROVER B. HILL,

Acting Secretary of Agriculture.

[F. R. Doc. 41-5075; Filed, July 16, 1941; 11:48 a. m.]

PART 102—GRAIN WAREHOUSES

AMENDMENT NO. 3 TO GRAIN WAREHOUSE REGULATIONS (SRA 127)

By virtue of the authority vested in the Secretary of Agriculture by the United States Warehouse Act, approved August 11, 1916 (39 Stat. 490; 7 U.S.C. 268) as amended, I, Paul H. Appleby, Acting Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following amendment to the regulations of the Secretary of Agriculture for grain warehousemen, promulgated May 9, 1931, under said Act, such amendment to be effective immediately.

Amend § 102.45 (Reg. 5, Sec. 13) to read as follows:

§ 102.45 *Storage of identity-preserved grain.* Upon acceptance for storage of bulk grain the identity of which is to be preserved, the warehouseman shall store such grain in a bin or bins, a compartment or compartments, or other container or containers identified by clearly distinguishable identification insignia permanently and securely affixed thereto, subject to such control by the Department as may seem administratively necessary to protect depositors or holders of receipts. If the grain is received in bags or other suitable containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the grain will not be lost while in storage. The warehouseman's records shall at all times clearly show the location of all identity-preserved grain stored in the warehouse.

Amend § 102.69 (Reg. 7, Sec. 9) to read as follows:

§ 102.69 *Copies of certificates to be kept.* Each inspector and each weigher shall keep for a period of one year in a place accessible to interested parties a copy of each certificate issued by him under these regulations, and shall file a copy of each such certificate with the warehouse in which the grain covered by the certificates is stored.

Done at Washington, D. C., this 16th day of July 1941. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

PAUL H. APPLEBY,

Acting Secretary of Agriculture.

[F. R. Doc. 41-5076; Filed, July 16, 1941; 11:48 a. m.]

CHAPTER III—BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE

[B. E. P. Q.—515]

PART 301—DOMESTIC QUARANTINE NOTICES

GYPSY MOTH AND BROWN-TAIL MOTH

Administrative Instructions Modifying the Restrictions of the Gypsy Moth and Brown-Tail Moth Quarantine by Authorizing the Issuance of Limited Permits for Certain Restricted Articles

JULY 8, 1941

Pursuant to the authority conferred upon the Chief of the Bureau of Entomology and Plant Quarantine by the second proviso of § 301.45, Chapter III, Title 7, Code of Federal Regulations [Notice of Quarantine No. 45 on account of the gypsy moth and brown-tail moth], § 301.45-4 is hereby amended, effective July 15, 1941, by the addition of the following sentence to subsection (d):

§ 301.45-4 *Conditions governing the issuance of certificates of inspection.*

(d) *Forest products and stone and quarry products.*

Forest products such as shavings or sawdust may be authorized interstate movement to such processing or manufacturing plants in nonregulated areas as may be designated by authority of the Chief of the Bureau of Entomology and Plant Quarantine for manufacturing or processing or treatment under either of the following conditions: (1) Under a certificate of inspection issued by the inspector upon the determination that the materials do not represent a hazard of spread of infestation; or (2) under a limited permit to the consignor, the issuance of which will be conditioned upon agreement that he will comply with such sanitation provisions with respect to methods of handling at point of origin and production, and conditions of shipment, as may be required by an inspector, and upon agreement by the consignee that he will comply with such sanitation provisions with respect to methods of handling at destination as may be required by an inspector.

Done at Washington, D. C., this 8th day of July 1941.

[SEAL]

AVERY S. HOYT,
Acting Chief.

[F. R. Doc. 41-5079; Filed, July 16, 1941;
11:49 a. m.]

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION

[FCI-Regulations-201-W]

PART 404—1942 WHEAT CROP INSURANCE REGULATIONS

By virtue of the authority vested in the Federal Crop Insurance Corporation by

the Federal Crop Insurance Act, approved February 16, 1938, as amended, these regulations are hereby published and prescribed to be in force and effect, with respect to the 1942 Wheat Crop Insurance Program, until amended or superseded by regulations hereafter made.

The Federal Crop Insurance Program for wheat is part of the general program of the United States Department of Agriculture administered for the benefit of agriculture.

DEFINITIONS

Sec.

404.1 Meaning of terms.

CONDITIONS GOVERNING APPLICATIONS FOR INSURANCE, THE INSURANCE CONTRACT, AND THE INSURANCE PERIOD

404.20 Application for insurance.

404.21 Acceptance of application by the Corporation.

404.22 Insurance coverage.

404.23 Period of insurance.

404.24 Notice of seeding.

404.25 Fraud, misrepresentation or failure to comply with terms of contract.

404.26 Modification of insurance contract.

TIME AND MANNER OF PAYMENT OF PREMIUMS AND NOTES AND TENDER OF DEPOSITS

404.30 Premium for the farm and for the insurance contract.

404.31 Minimum premium for the farm and for the insurance contract.

404.32 Manner of payment of premiums.

404.33 Time, place, and manner of making note payments.

404.34 Note payments in cash equivalent.

404.35 Note payments in wheat.

404.36 Note payments by application of 1941 crop year deposits.

404.37 Deposits to be applied toward payment of notes for future crop years.

404.38 Application of deposits toward payment of notes.

404.39 Premium earned upon seeding.

REFUND OF NOTE PAYMENTS AND DEPOSITS

404.40 Computation of refunds; time of making refunds.

404.41 Assignment or transfer of claims for refunds.

404.42 Death, incompetency, or disappearance of person entitled to refund; change of fiduciaries.

INSURED PRODUCTION

404.50 Insured production.

DETERMINATION OF LOSS

404.60 Notice during growing season.

404.61 Notice before harvest, removal, transfer, or other use.

404.62 Time of loss.

404.63 Proof of loss.

404.64 Amount of loss.

404.65 Records; access to the farm.

TIME AND MANNER OF PAYMENT OF INDEMNITY

404.70 When indemnity payable.

404.71 Manner of payment of indemnity.

404.72 Settlement under the certificate of indemnity.

404.73 Adjustments in connection with indemnity payments.

CHANGE OF INSURED'S INTEREST

404.80 Termination of insured's interest.

404.81 Transfers of interest.

404.82 Collateral assignment of insurance contract.

404.83 Death, incompetency, or disappearance of the insured.

404.84 Fiduciaries.

404.85 Creditors.

404.86 Determination of person to whom indemnity shall be paid.

Sec.

404.87 Payment conditioned upon compliance with provisions of the insurance contract.

MISCELLANEOUS

404.90 Gender and plural meaning of terms.

404.91 Fractional units in acres and yields.

404.92 Other insurance.

404.93 Subrogation.

404.94 Suit.

404.95 Restriction on purchase and sale of wheat.

404.96 Review of determinations of county committees.

DEFINITIONS

§ 404.1 *Meaning of terms.* For the purposes of the 1942 Wheat Crop Insurance Program, the term

"Application" means an application for an insurance contract properly executed on the form (and the continuation sheet thereto whenever applicable) prescribed by the Corporation.

"Application closing date" means the final date established by the Corporation for the submission of an application to the office of the county committee or the beginning of the seeding of the wheat crop on any of the farms covered by the application, whichever occurs first. The final date established by the Corporation for the submission of an application is (1) August 30, 1941 where winter wheat is to be seeded on any farm covered by the application and (2) February 28, 1942, where spring wheat only is to be seeded on all farms covered by the application.

"Average yield" means the wheat yield per acre established by the Corporation for the farm for the 1942 Wheat Crop Insurance Program.

"Basic market" means the market designated by the Corporation for the computation of the cash equivalent of note payments, deposits, refunds, or indemnities for the area in which the farms covered by the insurance contract are located: *Provided, however,* That if the Corporation finds that the basic market designated in connection with any such computation is inapplicable due to changes in market conditions, the Corporation shall designate another basic market in connection with any other of such computations.

"Board" means the Board of Directors of the Corporation.

"Branch manager" means the representative of the Corporation in charge of a branch office of the Corporation.

"Corporation" means the Federal Crop Insurance Corporation.

"County" means a political or civil division or local administrative area of a State.

"County committee" means the group of persons elected within any county to assist in the administration of the Agricultural Conservation Program in such county.

"Crop year" means the period within which a wheat crop is normally seeded and harvested. A crop year shall be designated by reference to the calendar year

in which the wheat crop is normally harvested.

"Department" means the United States Department of Agriculture.

"Farm" means all adjacent or nearby farm land under the same ownership which is operated by one person, including also any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops and all of which is used as the basis for the establishment of the average yield and premium rate: *Provided, however*, That (1) each field-rented tract (in the case of one or more field-rented tracts operated as a part of the farm) and (2) that portion of the farm which is always irrigated and that portion which is never irrigated (in the case of a farm containing both irrigated and nonirrigated land but not including a farm on which special practices are followed) shall be considered a separate farm for the purpose of determining the premium, the insured production, and the total production of wheat for the farm. A farm shall be regarded as located in the county in which the principal dwelling is situated, or, if there is no dwelling thereon, it shall be regarded as located in the county in which the major portion of the farm is located.

"Harvesting" means any severance of mature wheat.

"Harvesting as grain" means any severance of mature wheat for the purpose of using the same for grain, whether or not threshed.

"Insurance contract" means the contract of insurance entered into between the applicant and the Corporation by virtue of the application for insurance, the required notice of seeding, and these regulations and amendments thereto.

"Insured percentage" for the insurance contract means the percentage of the average yield for the farms covered by the insurance contract, and shall be either 50 or 75 percent. The insured percentage must be the same for all farms covered by the insurance contract.

"Insured production" means the maximum number of bushels for which the insured may be indemnified with respect to each farm covered by the insurance contract.

"Landlord or owner" means a person who owns land and rents such land to another person or operates such land.

"Manager" means the Manager of the Corporation.

"The maximum insurable acreage for a farm" shall be the wheat acreage allotment under the 1942 Agricultural Conservation Program or 15 acres, whichever is larger, except when two or more farms under the provisions of these regulations constitute one farm under the 1942 Agricultural Conservation Program, in which case the maximum insurable acreage for each farm as defined in these regulations shall be the same proportion of the wheat acreage thereon, as the acreage allotment

of the farm as constituted under the 1942 Agricultural Conservation Program or 15 acres, whichever is larger, is of the total acreage of the wheat crop on such farm.

"Note" means the agreement, as set forth in the application, containing the promise of the applicant to pay to the Corporation an amount equal to the premium for the insurance contract. Such note shall not bear interest either before or after maturity.

"Person" means an individual, partnership, association, corporation (including private or governmental), estate, or trust, or other legal entity, and, wherever applicable, a State, a political subdivision of a State, or any governmental agency.

"Price differential" with respect to each farm covered by the insurance contract means the amount per bushel fixed by the Corporation to represent the difference in wheat prices for the applicable basic market and the county or subdivision thereof applicable to such farm.

"Secretary" means the Secretary of Agriculture of the United States.

"Sharecropper" means a person who works a farm, in whole or in part, under the general supervision of the operator and is entitled to receive for his labor a share of the crop produced thereon or its proceeds.

"State committee" means the group of persons appointed by the Secretary within any State to assist in administering the Agricultural Conservation Program in such State.

"Tenant" means a person other than a sharecropper who rents land from another person (for cash, a fixed commodity payment, or a share of the crops or their proceeds) and is entitled under a written or oral lease or agreement to receive all or a share of the proceeds of the crops produced thereon or their proceeds.

"Wheat crop" means all seeded winter wheat and spring wheat on the farm in any crop year but does not include volunteer or self-seeded wheat, succotash, or true-type winter wheat seeded in the spring.*

*§§ 404.1 to 404.96, inclusive, issued under the authority contained in secs. 506 (e), 507 (c), 508, 509, 516 (b); 52 Stat. 73, 74, 75, 77; 7 U.S.C., Supp. V 1506 (e), 1507 (c), 1508, 1509, 1516 (b).

CONDITIONS GOVERNING APPLICATIONS FOR INSURANCE, THE INSURANCE CONTRACT, AND THE INSURANCE PERIOD

§ 404.20 Application for insurance.

(a) Application for insurance shall be made on a form prescribed for such purpose by the Corporation. Any person who has or expects to have an interest as landlord, owner, tenant, or sharecropper in the wheat crop on one or more farms located in a county may apply for insurance to cover such interest therein.

(b) The application shall cover all of the farms in the county in which the applicant has an interest in the wheat crop at the time such application is submitted to the office of the county committee and any other farms in the county

in which the applicant has an interest in the wheat crop at the time of the beginning of the seeding of such wheat crop.

(c) The application, which includes the note for payment of the premium as a part thereof, must be executed and submitted to the office of the county committee on or before the application closing date. In the event the applicant does not agree to participate in the 1942 Agricultural Conservation Program, payment on the note shall be made at the time the application is submitted of an amount representing the premium on the basis of the maximum insurable acreage for each and every farm listed on the application.*

§ 404.21 *Acceptance of applications by the Corporation.* Acceptance of an application by the county committee shall be acceptance on behalf of the Corporation: *Provided, however*, That the average yields and the premium rates specified in the application are in accordance with the average yields and the premium rates approved by the Corporation for the farms covered by such application: and *Provided, further*, That such application is submitted in accordance with the provisions of the application, these regulations, and any amendments thereto. Acceptance of the application shall be evidenced by the delivery to the applicant of a copy of the application signed by a member of the county committee for such committee.

The right is reserved to reject any application for insurance, or to limit the insured percentage to 50 percent of the average yield for the farm or farms covered by the insurance contract, in any case where the county committee determines that the risks to be incurred under the insurance contract warrant either such action.*

§ 404.22 *Insurance coverage.* The insurance shall attach, with respect to each farm covered by the insurance contract, only to the interest which the applicant has in the wheat crop on the farm at the time of the beginning of the seeding of the wheat crop on the farm.*

§ 404.23 *Period of insurance.* Insurance of the wheat crop or crops covered by the insurance contract shall attach when the wheat is seeded.

The insurance shall cease with respect to any portion of the wheat crop or crops covered by the insurance contract upon threshing (unless combined, field-sacked, and remaining in the field, in which event the insurance shall not cease for 120 hours thereafter) or removal from the farm, but in no event later than October 31, 1942, unless such time is extended in writing by the Corporation.*

§ 404.24 *Notice of seeding.* After the acreage of wheat seeded on the farm or farms under the insurance contract has been ascertained, the county committee shall execute a Notice of Seeding with respect to each farm, on a form prescribed by the Corporation, showing, as a result of the seeding of the wheat crop, the premium payable, the insured's in-

terest in the wheat crop at the beginning of the seeding of such wheat crop, and the insured production for the farm under the insurance contract. Where the farm is one not listed by the insured on his application for insurance, such notice shall also specify the average yield and premium rate per acre for the farm. A copy of such notice shall be delivered to the insured.*

§ 404.25 *Fraud, misrepresentation or failure to comply with terms of contract.* The entire insurance contract shall be voidable and the premium forfeited, at the election of the Corporation, if the insured has concealed or misrepresented, or conceals or misrepresents, any material fact or circumstance concerning the insurance contract or the subject thereof, or if the interest of the insured in the wheat crop or crops covered thereunder be not truly stated in the application, or if the insured is guilty of any fraud or makes any false statements relating to the insurance contract or the subject thereof, whether before or after a loss, or if the insured shall neglect to use all reasonable means to develop, care for, and save the entire wheat crop or crops covered by the insurance contract, whether before or after damage has occurred, or if the insured fails to give any notice to the Corporation or to furnish proof or proofs of loss within the time and in the manner prescribed in the insurance contract, or fails to comply with any of the terms, conditions, or covenants of the insurance contract.

The voidance hereunder of any insurance contract by the Corporation shall not alter or waive any right or remedy of the Corporation under the terms of the insurance contract, nor shall the authority granted by the insured be in any way affected, with respect to the means of effecting collection of the note, if any amount be due thereon at the time of such voidance, whether before or after maturity.*

§ 404.26 *Modification of insurance contract.* No notice to any county committee or representative of the Corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver or change in any part of the insurance contract or estop the Corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation; nor shall any provision or condition of the insurance contract or any forfeiture be held to be waived by any delay or omission by the Corporation in exercising its rights and powers hereunder or by any requirement, act, or proceeding, on the part of the Corporation or of its representatives relating to appraisal or to any examination herein provided for.*

TIME AND MANNER OF PAYMENT OF PREMIUMS AND NOTES AND TENDER OF DEPOSITS

§ 404.30 *Premium for the farm and for the insurance contract.* (a) The pre-

mium for each farm covered by the insurance contract shall be the product of the number of acres of the wheat crop seeded on such farm not in excess of the maximum insurable acreage, the premium rate per acre, and the applicant's interest in the wheat crop, except as provided in paragraph (b) of this section.

(b) If (1) special practices, (2) different percentage interests in different parts of the wheat crop on the farm, or (3) one or more tracts comprising the farm varies widely from the remainder of the farm in soil type, topography, productive capacity, or risk of loss, for which separate average yields and premium rates are established, are accepted as the basis for insurance for any farm covered by the insurance contract, the premium for such farm shall be the sum of the premiums computed separately in accordance with the formula stated in paragraph (a) of this section for (1) each special practice, (2) each part of the wheat crop in which the applicant's percentage interest is different, or (3) each tract and for the remainder of the farm where one or more tracts varies widely from the remainder of the farm in soil type, topography, productive capacity, or risk of loss, for which separate average yields and premium rates are established, as the case may be: *Provided, however,* That if the total acreage seeded on such farm is in excess of the maximum insurable acreage, the number of acres used in computing the premium for the farm in the case of items (1), (2), and (3) described above, shall be the same percentage of the acreage seeded for each of items (1), (2), and (3) described above, as the maximum insurable acreage for such farm is of the total acreage seeded on such farm.

(c) The premium for the insurance contract shall be the total of the premiums for the farms covered by the insurance contract.*

§ 404.31 *Minimum premium for the farm and for the insurance contract.* (a) The minimum premium for each farm covered by the insurance contract shall not be less than the product of the number of acres of the wheat crop seeded, not in excess of the maximum insurable acreage, the minimum premium rate per acre, as established by the Corporation, and the applicant's interest in the wheat crop.

(b) The minimum premium for any insurance contract shall be one bushel of wheat.*

§ 404.32 *Manner of payment of premiums.* The premium for the insurance contract shall be paid by the execution and payment of the note.*

§ 404.33 *Time, place, and manner of making note payments.* (a) Notes are payable on or before their maturity date. Note payments may be made, in part or in full, at any time prior to the maturity date of the note except as otherwise provided in paragraph (c) of § 404.20 of these regulations.

(b) Note payments shall be made at the office of the county committee for the

county in which the farm or farms covered by the insurance contract are located.

(c) Payments on notes on or before maturity may be made in wheat or in the cash equivalent. Payments on notes after maturity shall be made only in the cash equivalent.*

§ 404.34 *Note payments in cash equivalent.* (a) Payment of a note in the cash equivalent shall be made by cash or by check, money order, or bank draft, payable to the order of the Treasurer of the United States. All checks and drafts will be accepted subject to collection and payments tendered shall not be regarded as paid unless collection is made.

(b) In the case of full payment of any note in one payment, the cash equivalent of the note shall be determined by multiplying the number of bushels of wheat of the applicable class and grade constituting the premium for the insurance contract by an amount determined by subtracting the price differential from the price of such wheat at the applicable basic market. The price of such wheat at the basic market shall be the price, as determined by the Corporation, for the day on which the payment is made, except that if such payment is made after the maturity date of such note, the price shall be that applicable for the day on which such note matures.

(c) In the case of one or more partial payments made on a note, there shall be applied toward payment of the note for each such payment a number of bushels determined by dividing the amount of such payment by an amount determined by subtracting the price differential from the price of wheat at the applicable basic market for the applicable class and grade constituting the premium for the insurance contract. The price of such wheat at the basic market shall be the price, as determined by the Corporation, for the day on which the payment is made, except that if such payment is made after the maturity date of such note, the price shall be that applicable for the day on which such note matures.

(d) At maturity the amount due on any note shall be determined by multiplying the number of bushels of wheat of the applicable class and grade constituting the premium for the insurance contract, less the total number of bushels of wheat applied toward payment of the note as partial payments, if any, by an amount determined by subtracting the price differential from the price of such wheat at the applicable basic market. The price of such wheat at the basic market shall be the price, as determined by the Corporation, for the day on which such note matures.*

§ 404.35 *Note payments in wheat.* (a) Payment of a note in wheat shall be made by the delivery of a warehouse receipt or some other instrument acceptable to the Corporation (hereinafter referred to as warehouse receipt) representing salable wheat. Note payments in wheat, with the exception of the ap-

plication of deposits, as provided in § 404.38 of these regulations, shall not be accepted unless made on or before the maturity date of such notes.

(b) The county committee, on behalf of the Corporation, shall sell all warehouse receipts tendered and the net proceeds received from the sale of the warehouse receipts shall be applied toward payment of the note in terms of bushels of wheat. For each such note payment, there shall be applied toward payment of the note, a number of bushels of wheat determined by dividing the amount of such net proceeds by an amount determined by subtracting the price differential from the price of wheat at the applicable basic market for the applicable class and grade constituting the premium for the insurance contract. The price of such wheat at the basic market shall be the price, as determined by the Corporation, for the day on which such warehouse receipt was tendered in the county committee.

(c) If at any time the Corporation's title to such receipt or the wheat represented thereby is questioned by any person, then, unless the question of title to or charges against such wheat is immediately settled without cost to the Corporation, the Corporation shall not be liable for the payment of any indemnity under the insurance contract with respect to which such receipt was tendered in payment of the note, and shall not be liable for a deposit or refund because of the tendering of such receipt. Any payment of indemnity or refund of payment made under the insurance contract with respect to which such receipt was tendered in payment of the note, and any refund of deposit, shall be returned to the Corporation without limiting any other right or remedy of the Corporation. Any charges or cost to the Corporation in connection with such warehouse receipt, or the wheat represented thereby, may be set off against any indemnity which may be or may become due under any insurance contract entered into with the applicant or in which he may have an interest. Settlements necessitated by the transfer of receipts failing to convey title to the receipt and the wheat represented thereby shall be on the basis of the cash equivalent applicable for the day when such receipt was tendered to the Corporation.*

§ 404.36 *Note payments by application of 1941 crop year deposits.* Any amount which is on deposit with the Corporation pursuant to the 1941 Wheat Crop Insurance Regulations, as amended, shall be applied in terms of bushels in payment of the note with respect to any insurance for which the depositor's application is accepted. Any amount of such deposit in excess of the amount required for payment of the note or notes for such insurance shall be refunded to the depositor in accordance with the 1941 Wheat Crop Insurance Regulations, as amended. Any excess payment made by means of the application of any such de-

posit shall be refunded in accordance with § 404.40 of these regulations.*

§ 404.37 *Deposits to be applied toward payment of notes for future crop years.*

(a) Any person who submits an application and, at the time of such submission, makes a payment on the related note in an amount to cover not less than the number of bushels required as premium on the basis of the maximum insurable acreage for each and every farm listed on such application, may tender, at such time only, a deposit of wheat or cash in an amount, not in excess of the amount paid on the note, toward the payment of notes for the next succeeding crop year. The Corporation reserves the right to reject the tender of any deposit.

The acceptance of any deposit by the Corporation shall not obligate the Corporation to insure the interest of the depositor in any future insurance program, and any insurance contract for which such deposit is applied in payment of the note will be subject to the provisions of the regulations applicable with respect to such insurance contract.

An insured shall have no title or interest in any wheat (including any wheat deposited) held by the Corporation. The Corporation shall be liable to the insured only for the cash equivalent of the quantity of wheat credited or to be credited to the insured's account, such cash equivalent to be determined in accordance with the provisions of § 404.40 of these regulations.

(b) Deposits tendered in the cash equivalent shall be made in the manner as provided in paragraph (a) of section 404.34 of these regulations for note payments in the cash equivalent.

(c) Deposits tendered in wheat shall be made in the manner as provided in and subject to the same conditions set forth in § 404.35 of these regulations for note payments in wheat.

(d) Any tender of deposit, whether in wheat or cash, will be credited to the insured's account in terms of the wheat equivalent of the net proceeds of the sale of the wheat by the county committee, if wheat is tendered, or of the cash, if cash is tendered. This credit shall be made on the basis of the class and grade of wheat constituting the premium for the insurance contract with which the deposit is tendered. The wheat equivalent of such proceeds or cash, as the case may be, shall be determined by dividing such amount by an amount determined by subtracting the price differential from the price of wheat at the applicable basic market for the applicable class and grade constituting the premium for the insurance contract with which the deposit is tendered. The price of such wheat at the basic market shall be the price, as determined by the Corporation, for the day on which the deposit is tendered.*

§ 404.38 *Application of deposits toward payment of notes.* The Corporation may apply any amount credited to an insured's account as a deposit toward payment of the amount due on any note of such insured. Where the amount of

the deposit is to be applied toward payment of the note for an insurance contract covering a farm or farms for which the applicable price differential is different from that applicable for the farm or farms covered by the insurance contract with which the deposit was made, the insured may be charged or credited with an amount of wheat, as determined by the Corporation reflecting the difference between the price differential applicable at the place where the deposit was made and the price differential applicable for the farm or farms covered by the insurance contract for which the amount of deposit is being applied in payment of the note.*

§ 404.39 *Premiums earned upon seeding.* Premiums shall be regarded as earned when the wheat is seeded.*

REFUND OF NOTE PAYMENTS AND DEPOSITS

§ 404.40 *Computation of refunds; time of making refunds.* (a) Any refund of payments or deposits shall be made only in the cash equivalent of the quantity of wheat to be refunded, less an amount, fixed by the Corporation, to cover storage and handling expenses. In no case shall the amount to be deducted exceed 1/20 of one cent per day per bushel. The period for which such deduction shall be computed shall commence with and include the day on which the note payment or deposit was tendered: *Provided, however,* That if payments on the note for the insurance contract are made at different times, such payments shall be applied in the order in which tendered, and the refund shall be regarded as being made from the payment or payments tendered, starting with the last, any portion of which was not used in payment of the note, and each such payment or portion thereof not so used in payment of the note shall be considered as a separate payment for the purpose of determining the day for which such period shall commence. Such period shall end with and include the day on which payment of the refund is approved by the Corporation.

(b) No refund of a note payment shall be acted upon by the Corporation until the acreage seeded to wheat on all of the farms covered by the insurance contract has been determined. Except as may otherwise be provided by the Corporation, no claim for refund of a deposit shall be considered prior to the final date fixed by the Corporation for the receipt of applications for the 1943 Wheat Crop Insurance Program. Nothing in this subsection shall be construed to restrict the Corporation's right to refund any deposit or premium at such earlier date as it may determine.

(c) The cash equivalent of any refund of a deposit shall be determined by multiplying the amount to be refunded in terms of bushels of wheat of the class and grade constituting the premium for the insurance contract with respect to which the deposit was made by an amount determined by deducting the price differential applicable for the day the deposit

was tendered from the applicable basic market price of such wheat at such time.

(d) The cash equivalent of any refund, other than a refund of a deposit, shall be determined by multiplying the amount to be refunded in terms of bushels of wheat of the class and grade constituting the premium for the insurance contract by an amount determined by deducting the price differential applicable for the day the payment was made from the applicable basic market price of such wheat at such time: *Provided, however,* That if payments on the note for the insurance contract are made at different times, such payments shall be applied in the order in which tendered, and the refund shall be regarded as being made from the payment or payments tendered, starting with the last, any portion of which was not used in payment of the note, and each such payment or portion thereof not so used in payment of the note shall be considered as a separate payment in the application of such formula for determining the amount of such refund.

(e) Any amount tendered in payment of the note in excess of the amount required as the premium for the insurance contract shall be refunded.

(f) No refund shall be made if the amount thereof is less than one bushel.*

§ 404.41 *Assignment or transfer of claims for refunds.* No claim for a refund, or any part or share thereof, or any interest therein, shall be assignable or transferable, notwithstanding any assignment of the insurance contract as security or any transfer of interest in any wheat crop covered by the insurance contract. Refund of any deposit will be made only to the depositor and refund of any other payment will be made only to the person who made such payment.*

§ 404.42 *Death, incompetency, or disappearance of person entitled to refund; change of fiduciaries.* In any case where a person who is entitled to a refund of a payment or deposit has died, has become incompetent, has disappeared leaving his whereabouts unknown for a period of 150 days from the date the Corporation determines that a refund is due, or has ceased to act as fiduciary, such refund will be made to his legal representative or successor. If no such legal representative or successor has been appointed, or is otherwise legally qualified, and the quantity of wheat to be refunded before deduction of storage and handling expenses is less than 500 bushels, such refund may be made to any one or more of the persons beneficially entitled to share in such refund on behalf of all the persons so entitled upon proof of the facts satisfactory to the Corporation. The determination of the Corporation as to the existence or nonexistence of a circumstance in the event of which payment of a refund may be made to a person other than the person who made the payment or tendered the deposit, as the case may be, shall be final and conclusive and payment in accordance with such determination shall constitute a complete discharge

of the Corporation's obligation with respect to the refund.*

INSURED PRODUCTION

§ 404.50 *Insured production.* (a) The insured production for each farm covered by the insurance contract shall be the product of the number of acres of the wheat crop seeded not in excess of the maximum insurable acreage, the average yield, the insured percentage, and the insured's interest in the wheat crop, except as provided in paragraph (b) of this section.

(b) If (1) special practices, (2) different percentage interests in different parts of the wheat crop on the farm, or (3) one or more tracts comprising the farm varies widely from the remainder of the farm in soil type, topography, productive capacity, or risk of loss, for which separate average yields and premium rates are established, are accepted as the basis for insurance for any farm covered by the insurance contract, the insured production for each such farm shall be the sum of the totals of the insured production computed separately in accordance with the formula stated in paragraph (a) of this section for (1) each special practice, (2) each part of the wheat crop in which the applicant's percentage interest is different, or (3) each tract and for the remainder of the farm where one or more tracts comprising the farm varies widely from the remainder of the farm in soil type, topography, productive capacity, or risk of loss, for which separate average yields and premium rates have been established, as the case may be: *Provided, however,* That if the total acreage seeded on such farm is in excess of the maximum insurable acreage, the number of acres used in computing the insured production for the farm in the case of items (1), (2), and (3) described above shall be the same percentage of the acreage seeded for each of items (1), (2), and (3) described above as the maximum insurable acreage for such farm is of the total acreage seeded on such farm.*

DETERMINATION OF LOSS

§ 404.60 *Notice during growing season.* (a) Immediately after the wheat crop, or any portion thereof, on any farm covered by the insurance contract has been transferred to another person, notice in writing thereof shall be given, on a form provided by the Corporation for that purpose, to the Corporation at the office of the county committee for the county in which such farm is located.

(b) Immediately after material damage to the wheat crop, or any portion thereof, on any farm covered by the insurance contract, the insured, if he wishes to dispose of such crop, or portion thereof, or to make some other use of the land seeded to such crop, or portion thereof, other than for the production of wheat, shall give notice thereof, in writing, on a form provided by the Corporation for that purpose, to the Corporation at the office of the county committee for the

county in which such farm is located, containing such information as may reasonably be required regarding the damaged crop. The Corporation may make an investigation of any such wheat crop where it appears that the reported damage may be of such a nature as to result in a loss for such farm under the insurance contract. The Corporation shall have a reasonable period after receipt of such notice in which to investigate the condition of such wheat crop and appraise the yield of such crop, or portion thereof. Proper measures shall be taken to protect the crop from further damage until threshing, unless the Corporation gives its permission to devote the acreage seeded to wheat to some other use. No acreage seeded to wheat shall be considered as put to another use as long as there is any wheat on such acreage remaining for harvest. In no event shall there be any abandonment of any crop or portion thereof to the Corporation.

(c) If the insured wishes to dispose of the portion of the crop in excess of the maximum insurable acreage, where the farm is classified as a non-wheat allotment farm under the 1942 Agricultural Conservation Program, the insured shall give notice thereof, in writing, on a form prescribed by the Corporation for that purpose, to the Corporation at the office of the county committee for the county in which the farm is located. If the insured desires to pasture off, cut for hay, or use for soil conservation purposes, before maturity, all or a portion of the wheat crop on any farm covered by the insurance contract, he shall give notice thereof in the manner set forth in this paragraph. The Corporation shall have a reasonable period after receipt of such notice to investigate the condition of the wheat crop and such portion thereof.*

§ 404.61 *Notice before harvest, removal, transfer, or other use.* (a) Notwithstanding any other notice given as required by the insurance contract, if it is probable that there will be a loss for any farm covered by such insurance contract, notice in writing of the intention to harvest, remove, transfer, or make other use of the wheat crop, or portion thereof, on such farm, shall be given to the Corporation, at the office of the county committee in which the farm or farms covered by such contract are located, in time to give the Corporation reasonable opportunity to inspect such wheat crop before such harvest, removal, transfer, or other use.*

§ 404.62 *Time of loss.* Loss, with respect to the wheat crop on any farm covered by the insurance contract, shall be deemed to have occurred at the time of completion of threshing of such crop (unless combined, field-sacked, and remaining in the field, in which event the loss shall be deemed to have occurred 120 hours thereafter) or October 31, 1942, whichever occurs first, unless the Corporation determines that total or substantially total destruction of the wheat crop occurred earlier, in which event the loss shall be deemed to have occurred on

the date so determined by the Corporation. The wheat crop shall be deemed to have been substantially totally destroyed if the Corporation finds that it has been so badly damaged that the farmers generally in the area where the farm is located would not further care for the crop for wheat production.*

§ 404.63 *Proof of loss.* If a loss is claimed with respect to any farm covered by the insurance contract, the insured shall submit to the Corporation, at the office of the county committee for the county in which the farm or farms covered by the insurance contract are located, on a form provided by the Corporation for that purpose, a statement in proof of loss for such farm, containing such information as may reasonably be required regarding the wheat crop on such farm. Such statement in proof of loss shall be submitted not later than thirty days after threshing, but in no event later than November 15, 1942, unless such time is extended in writing by the Corporation. It shall be a condition precedent to any liability under the insurance contract that the insured establish that any loss for which claim is made has been directly caused by a hazard insured against by the insurance contract during the term of the contract, and that the insured further establish that such loss has not arisen from or been caused by, either directly or indirectly, any of the hazards not insured against by the insurance contract.*

§ 404.64 *Amount of loss.* (a) The amount of loss for which indemnity will be paid with respect to any farm covered by the insurance contract shall be the amount by which the total production of wheat for such farm, multiplied by the percentage representing the insured's interest in the wheat crop on such farm, or portion thereof, is less than the insured production for such farm. Such total production, for the purpose of determining the amount of loss, shall include:

(1) Wheat produced from any acreage of the wheat crop which was threshed;

(2) Wheat production appraised from any acreage of the wheat crop which was not threshed, but which was otherwise harvested as grain;

(3) Wheat production appraised from any acreage of the wheat crop which was not harvested as grain, was not threshed, but which, after maturity, was left standing in the field;

(4) Wheat production appraised from any acreage of the wheat crop which was totally or substantially totally destroyed and put to another use with the consent of the Corporation;

(5) For the acreage of the wheat crop in excess of the maximum insurable acreage on farms classified as non-wheat allotment farms under the 1942 Agricultural Conservation Program which is disposed of with the consent of the Corporation and on which the appraised yield per acre is greater than the appraised yield per acre for the remain-

ing acreage of the wheat crop, a number of bushels equal to the product of (i) such acreage disposed of, (ii) the quantity of wheat by which the appraised yield per acre for such acreage is greater than the appraised yield per acre for the remaining acreage of the wheat crop, and (iii) the insured percentage. No adjustment shall be made if the appraised yield per acre of the acreage disposed of is not greater than the appraised yield per acre for such remaining acreage of the wheat crop.

(6) For the acreage of the wheat crop which was not reseeded in areas and under circumstances where it is customary to reseed, a number of bushels equal to the quantity of wheat by which the actual production for such acreage is less than the product of (i) such acreage, (ii) the average yield, and (iii) the insured percentage;

(7) For the acreage of the wheat crop which before maturity, is pastured off, cut for hay, or used for soil conservation purposes, with the consent of the Corporation, a number of bushels equal to the product of (i) such acreage, (ii) the appraised yield per acre for such acreage, and (iii) the insured percentage;

(8) For the acreage of the wheat crop which was a complete failure in yield due to causes not insured against, or because the land or crop was put to some other land use or crop use without the consent of the Corporation, a number of bushels equal to the appraised reduction in production due to such causes or due to the land or crop being put to another use without consent of the Corporation. In no event shall such appraised reduction in production be less than the product of (i) such acreage, (ii) the average yield, and (iii) the insured percentage;

(9) For the acreage of the wheat crop which has been damaged by reason of causes not insured against, or which has been damaged or destroyed by reason of causes insured against and causes not insured against, a number of bushels equal to the appraised reduction in production due to causes not insured against;

(10) For the acreage of the wheat crop seeded on land of poorer average quality for the production of wheat than the average quality of the land seeded to wheat on the farm during the base period, where such seeding is not the result of a regularly established rotation, a number of bushels equal to the product of (i) such acreage, (ii) the insured percentage, and (iii) a quantity of wheat representing the difference between the average yield and the yield per acre appraised on the basis of the quality of land so seeded. This adjustment shall be made notwithstanding that damage or total destruction of the insured crop occurs by reason of any other cause;

(11) For the acreage of the wheat crop for which the risk to the Corporation has been increased by reason of the seeding of a different class of wheat than the class of wheat considered in establishing

the average yield, a number of bushels equal to the product (i) such acreage, (ii) the insured percentage, and (iii) a quantity of wheat representing the difference between the average yield and the yield per acre appraised on the basis of the class of wheat seeded. This adjustment shall be made notwithstanding that damage or total destruction of the insured crop occurs by reason of any other cause;

(12) For the acreage of the wheat crop for which the risk to the Corporation has been increased by reason of following different fertilizer or farming practices than those considered in establishing the average yield, a number of bushels equal to the product of (i) such acreage, (ii) the insured percentage, and (iii) a quantity of wheat representing the difference between the average yield and the yield per acre appraised on the basis of the fertilizer or farming practices followed. This adjustment shall be made notwithstanding that damage or total destruction of the insured crop occurs by reason of any other cause;

(13) For the acreage of the wheat crop which is insured on the basis of irrigation (except where irrigated and non-irrigated yields have been established for the farm) and on which the necessary irrigation water was not applied or was not applied at the proper time or in the proper manner, a number of bushels equal to the appraised reduction in production due to any such cause. This adjustment shall be made notwithstanding that damage or total destruction of the insured crop occurs by reason of any other cause. No adjustment shall be made if no water was available for irrigation purposes on the farm, or if the amount of irrigation water available was insufficient, due to unavoidable causes, for all the irrigated crops and the amount of water available was distributed among the irrigated crops so that as large a proportion of the acreage in the wheat crop was protected by irrigation water as the acreage of other crops under irrigation on the farm;

(14) For the acreage of the wheat crop or portion thereof in which the insured's interest has changed by reason of one or more transfers of interest as provided in paragraph (b) of § 404.81 of the regulations in this part and for which the Corporation determines that such transfers were made, after the time that substantial damage occurred to such wheat crop or portion thereof, for the purpose of procuring a greater amount of indemnity than would have been payable for the farm had such transfers not taken place, a number of bushels, as determined by the Corporation, to the extent that the number of bushels for which the Corporation will be liable as an indemnity for the farm shall not exceed the number of bushels that would have been payable had such transfers not taken place.*

§ 404.65 *Records; access to the farm.* The insured shall keep, or cause to be

kept, records of the harvesting, threshing, storage, shipment, sale, or other disposition of all wheat produced on the farm or farms covered by the insurance contract which will be made available for examination by the Corporation, and he shall cooperate with the county committee in the establishment of data with respect to the production of wheat on such farm or farms. As often as may reasonably be required, any person or persons designated by the Corporation will have access to the farm or farms covered by the insurance contract.*

TIME AND MANNER OF PAYMENT OF INDEMNITY

§ 404.70 *When indemnity payable.* The amount of loss for which the Corporation may be liable with respect to any farm covered by the insurance contract shall be payable within 30 days after satisfactory proof of loss is approved by the Corporation. Notwithstanding the fact that payment of any indemnity is delayed for any reason beyond the time specified, the Corporation shall not be liable for interest or damages on account of such delay.*

§ 404.71 *Manner of payment of indemnity.* The indemnity with respect to any farm covered by the insurance contract shall be paid by the issuance by the Corporation of a certificate of indemnity to the insured indicating the number of bushels of indemnity due. This certificate of indemnity may be used to obtain (1) The cash equivalent of the indemnity;

(2) A loan, if loans are made available by the Commodity Credit Corporation with respect to the 1942 wheat crop; or

(3) A warehouse receipt, if wheat is available.*

§ 404.72 *Settlement under the certificate of indemnity.* (a) The insured may obtain the cash equivalent of the indemnity by executing the certificate of indemnity and forwarding such certificate to the appropriate branch office of the Corporation. The cash equivalent shall be determined by multiplying the number of bushels of wheat due as indemnity, of the applicable class and grade constituting the premium for the insurance contract, by an amount determined by subtracting the price differential from the price of such wheat at the applicable basic market. The price of such wheat at the basic market shall be the price, as determined by the Corporation, for the day on which the certificate of indemnity is received in the appropriate branch office of the Corporation or the date of expiration of the certificate of indemnity, whichever is earlier. In addition to the price differential, a deduction from such price of wheat shall be made, of an amount per bushel based on the length of time elapsing between the date of approval of the statement in proof of loss and the date the price used for computing the cash equivalent is established. Such deduction shall be at the rate of one-half ($\frac{1}{2}$) cent per bushel for each fifteen (15)

day period or fraction thereof after the first fourteen (14) days which shall be free. The period for computing this deduction shall begin with the day on which the statement in proof of loss is approved by the Corporation and shall end with and include the day on which the price used in computing the cash equivalent is based.

(b) A loan may be obtained by the insured on the basis of the certificate of indemnity (if loans are made available by the Commodity Credit Corporation with respect to the 1942 wheat crop) in accordance with instructions issued by the Commodity Credit Corporation. If, at any time during the period of the loan, the insured elects to liquidate such loan by the establishment of the cash equivalent of the indemnity, he shall execute the form prescribed by the Corporation and forward such form to the appropriate branch office of the Corporation. The cash equivalent of the indemnity shall be established on the basis of the prices in effect on the date that the request of the insured is received in the appropriate branch office of the Corporation. The amount of the cash equivalent shall be computed in the same manner as is provided in paragraph (a) of this section. If the amount of the cash equivalent is not sufficient to liquidate the loan and charges in connection therewith, the Corporation shall notify the insured of such fact.

(c) A warehouse receipt may be obtained by the insured on the basis of the certificate of indemnity, if the Corporation determines that wheat is available for making such settlement. Where the settlement is made in wheat, payment shall be made in the form of a warehouse receipt representing flat wheat (wheat which has no transit privileges) for the number of bushels approved by the Corporation as the amount of loss, or of such portion thereof as the insured may request, and of the applicable class and grade constituting the premium for the insurance contract, or its equivalent in wheat of any other class, grade, or quality, as determined by the Corporation. However, in any case where the settlement or any portion thereof is made in wheat, a deduction will be made from the indemnity payment of a number of bushels representing the deduction that would have been made under paragraph (a) of this section had the settlement been made in the cash equivalent. In the event only a portion of the settlement is made in wheat, payment of the balance of such settlement will be effected by the issuance to the insured of a new certificate of indemnity representing such balance. Settlements under this subsection will be made only if the request of the insured is received by the Corporation prior to the expiration date of the certificate of indemnity.

(d) The expiration date of the certificate of indemnity shall be fifteen (15) days after the final date established for

obtaining wheat loans with respect to the 1942 wheat crop if such loans are made available by the Commodity Credit Corporation, or ninety (90) days after the date of issuance of the certificate of indemnity, whichever is later. If any of these dates fall on other than a business day, the date of the next following business day shall apply.

(e) Any indemnity payable under the insurance contract shall be subject to deduction for any amount remaining unpaid on the note for the insurance contract.

(f) The certificate of indemnity shall not be assignable except as otherwise provided in paragraph (b) of this section.*

§ 404.73 *Adjustments in connection with indemnity payments.* In any case where a certificate of indemnity has been issued or settlement under the certificate of indemnity has been made by the Corporation and an adjustment in the amount of indemnity is made for such case the adjustment shall be made on the same terms and as of the same date as the original settlement except that if settlement has been made under the certificate of indemnity such adjustment shall be made on the basis of the cash equivalent applicable to such settlement, computed in the manner provided in § 404.72 of the regulations in this part, whether or not the settlement was made in wheat or in the cash equivalent thereof.*

CHANGE OF INSURED'S INTEREST

§ 404.80 *Termination of insured's interest.* (a) If, prior to the time of loss, the insured's interest in the wheat crop or portion thereof on any farm covered by the insurance contract has been terminated for any reason, the indemnity, if any is payable with respect to such farm, shall be paid to the person or persons having such interest at the time of loss, subject to all the provisions of the insurance contract including any collateral assignment of the insurance contract and the right of the Corporation to deduct from any indemnity the amount remaining unpaid on the note for such insurance contract.

(b) The insured's interest shall not be deemed to have been terminated by virtue of the imposition of a lien, whether by voluntary action or process of law, upon the wheat crop, or by the appointment of a receiver or moratorium officer with respect to such wheat crop, the commencement of bankruptcy proceedings, or proceedings for the foreclosure of a lien. The insured shall be deemed to have an interest in the wheat crop so long as he has any right of redemption therein.*

§ 404.81 *Transfers of interest.* (a) In the event that an insured percentage interest in the entire crop is transferred by the insured prior to the time of loss, the person or persons having such interest in the crop at the time of loss shall be entitled to receive any indemnity otherwise payable with respect to the interest in the crop transferred.

(b) In the case of a transfer prior to the time of loss by the insured of all or a portion of his percentage interest in a portion of the wheat acreage constituting the wheat crop, each person having an interest in such wheat crop shall be entitled to the benefit of the insurance contract as his interest appears and shall submit a separate statement in proof of loss for each portion of the wheat acreage in which he has an interest but for which his percentage interest is different. The amount of loss, for each such portion of the wheat acreage, shall be determined as provided in § 404.64 of the regulations in this part, except that the total production of wheat for each such portion of the wheat acreage shall be determined on the basis of such acreage instead of the entire wheat crop and the insured production shall be computed for such acreage as the product of such acreage, the average yield approved by the Corporation for the farm of which such acreage is a part, the insured percentage, and the percentage interest of the insured or transferee, as the case may be, in such acreage.*

§ 404.82 *Collateral assignment of insurance contract.* An insurance contract may be assigned as collateral security for a current loan, current advances to assist in the making of a wheat crop, the amount of the current year's rental due under a leasing agreement with respect to the farm or farms upon which the wheat crop is or will be seeded, or the amount of the current annual installment due under a purchase, mortgage, or trust agreement covering the purchase of the farm or farms upon which the wheat crop is or will be seeded and an additional amount of any delinquency which may be due under the purchase, mortgage, or trust agreement of not to exceed the amount of the current annual installment including interest and taxes. Such assignment shall be made by the execution of a form prescribed by the Corporation, and, upon approval thereof by the Corporation, the interests of the assignee will be recognized in the event of the payment of an indemnity under the insurance contract to the extent of the unpaid balance of the amount (including interest and other charges) for which such assignment was made as collateral security: *Provided, however,* That (1) the Corporation, in payment of the indemnity may issue a check payable jointly to all persons entitled thereto and that such payment shall constitute a complete discharge of the Corporation's obligation with respect to such loss under the insurance contract; and (2) payment of any indemnity will be subject to all conditions and provisions of the insurance contract including the right of the Corporation to deduct from any indemnity the amount remaining unpaid on the note for such insurance contract. The Corporation's approval of an assignment shall not create in the assignee any right other than that derived from the assignor. The Corporation shall in no case be

bound to accept notice of any assignment of the insurance contract, and nothing therein contained shall give any right against the Corporation to any person other than the insured except to an assignee approved by the Corporation. Only one such assignment will be recognized in connection with the insurance contract, but if an assignment is released, a new assignment of the contract may be made.*

§ 404.83 *Death, incompetency, or disappearance of the insured—(a) Death.*

(1) Before loss with administration: If the insured dies before the time of loss, and his interest in the wheat crop or corps forms part of his estate, payment of any indemnity and settlement under the certificate of indemnity will be made to the duly appointed representative of his estate.

(2) After loss with administration: If the insured dies after the time of loss, payment of any indemnity and settlement under the certificate of indemnity on account of such loss will be made to the duly appointed representative of his estate.

(3) Before loss without administration: If the insured dies before the time of loss and no legal representative of his estate is appointed or is otherwise legally qualified, payment of any indemnity and settlement under the certificate of indemnity may be made after the expiration of 30 days from the date of death to any one or more of the persons beneficially entitled to share in the insured's interest in the crop in behalf of all the persons so entitled. Payment of the indemnity and settlement under the certificate of indemnity will be made under the provisions of this subsection only if the amount of the indemnity for any farm is less than 500 bushels and upon the submission of proof satisfactory to the Corporation that the insured's interest in the crop is part of his estate.

(4) After loss without administration: If the insured dies after the time of loss and no legal representative of his estate is appointed or is otherwise legally qualified, then, subject to the conditions outlined in paragraph (a) (3) of § 404.83, payment of any indemnity and settlement under the certificate of indemnity on account of such loss may be made after expiration of 30 days from the date of death to any one or more of the persons beneficially entitled to share in the insured's interest in the crop in behalf of all the person so entitled.

(b) *Incompetency.* (1) Before loss: If, before the time of loss the insured is judicially declared incompetent to manage his affairs, or his incompetency is otherwise established to the satisfaction of the Corporation, and his interest in the crop remains part of his estate, payment of any indemnity and settlement under the certificate of indemnity will be made to the guardian, or other legally constituted representative of his estate

appointed by a court of competent jurisdiction, or who is otherwise legally qualified. In such case if no guardian or other legal representative of the insured's estate is appointed, or is otherwise legally qualified and the amount of the indemnity for any farm is less than 500 bushels, payment of such indemnity and settlement under the certificate of indemnity may be made to a member of his family standing in the position of a voluntary guardian upon presentation of proof satisfactory to the Corporation that the indemnity is needed and is to be used for the purchase of necessities for the incompetent, or for his wife or minor children or other persons dependent upon him for support. If the insured's interest in the crop is terminated by reason of his incompetency, any relative by blood or connection by marriage of the insured who succeeds to such interest, but no other person, shall be entitled to the benefit of the insurance contract.

(2) After loss: If, after the time of loss, the insured is judicially declared incompetent to manage his affairs, or his incompetency is otherwise established to the satisfaction of the Corporation, payment of any indemnity and settlement under the certificate of indemnity will be made to the guardian or other legally constituted representative of his estate appointed by a court of competent jurisdiction or who is otherwise legally qualified. If there be no such guardian or other legal representative, and the amount of the indemnity for any farm is less than 500 bushels, payment of such indemnity and settlement under the certificate of indemnity may be made to a member of the insured's family standing in a position of voluntary guardian upon presentation of proof satisfactory to the Corporation that the indemnity is needed and is to be used for the purchase of necessities for the incompetent, or his wife or minor children or other persons dependent upon him for support.

(c) *Disappearance.* (1) Before loss: If, before the time of loss, the insured disappears and such insured's interest in the crop covered by the insurance contract is not terminated thereby, payment of any indemnity and settlement under the certificate of indemnity will be made to the conservator or other legally qualified representative of his estate. If there be no such conservator or other legal representative, and the amount of the indemnity for any farm is less than 500 bushels, payment of such indemnity and settlement under the certificate of indemnity may be made to any member of the insured's family upon presentation of proof satisfactory to the Corporation that the indemnity is needed and is to be used for the purchase of necessities for the insured's wife or minor children or other persons dependent upon him for support. If the insured's interest in the crop is terminated by reason of his disappearance, any relative by blood or connection by marriage of the insured who succeeds to his interest in the crop, but no

other person, shall be entitled to the benefit of the insurance contract.

(2) After loss: If, after the time of loss, the insured disappears, payment of any indemnity and settlement under the certificate of indemnity will be made to the conservator or other legally qualified representative of his estate, but if there be no such conservator or other legal representative and the amount of the indemnity for any farm is less than 500 bushels, payment of the indemnity and settlement under the certificate of indemnity may be made to a member of the insured's family upon presentation of proof satisfactory to the Corporation that the indemnity is needed and is to be used for the purchase of necessities for the insured's wife or minor children or other persons dependent upon him for support.

(3) Definition of disappearance: An insured shall be deemed to have disappeared within the meaning of this section if he leaves the farm or farms covered by the insurance contract and his whereabouts have been unknown for a period of 150 days.

(d) *Indemnity payment or settlement under the certificate of indemnity amounting to 500 bushels or more.* If the insured dies, becomes incompetent or disappears and his interest in the crop remains part of his estate, payment of the indemnity and settlement under the certificate of indemnity for any farm amounting to 500 bushels or more will be made only to his legal representative.*

§ 404.84 *Fiduciaries.* Any indemnity payable under an insurance contract entered into in the name of a fiduciary who is no longer acting in such capacity at the time for the payment of indemnity and settlement under the certificate of indemnity will be made to the succeeding fiduciary upon appropriate application and proof satisfactory to the Corporation of his incumbency. In the event that there is no succeeding fiduciary, payment of the indemnity and settlement under the certificate of indemnity shall be made to the persons beneficially entitled to the interest in the insured crop to the extent of their respective interests upon proper application and proof of the facts: *Provided, however,* That the loss may be adjusted with any one or more persons so entitled, and payment may be made to such person or persons in behalf of all the persons so entitled, whether or not the person to whom payment is made has been authorized to receive such payment by the other persons so entitled.*

§ 404.85 *Creditors.* An interest existing by virtue of a debt, lien, mortgage, garnishment, levy, execution, bankruptcy, or any other legal process shall not be considered an interest in an insured crop within the meaning of these regulations.

Any indemnity payable under an insurance contract shall be paid to and settlement under the certificate of in-

demnity made to, the insured, or to such other person as may be entitled to the benefits of the insurance contract under the provisions of these regulations, notwithstanding any attachment, garnishment, receivership, trustee process, judgment, levy, execution, lien, mortgage, foreclosure, order, decree, or similar process of law, equity, or bankruptcy directed against the insured or such other person, or against any indemnity alleged to be due to such person, nor shall the Corporation or any officer, employee, or representative thereof be a proper party to any suit or action with reference to such indemnity or the proceeds thereof nor be bound by any judgment, order, or decree rendered or entered therein. No officer, agent, or employee of the Corporation shall pay, or cause to be paid, to any person other than the insured or other person entitled to the benefits of the insurance contract, any indemnity payable and settlement under any certificate of indemnity in accordance with the provisions of the insurance contract because of any such process, order, or decree. Nothing herein contained shall excuse any person entitled to the benefits of the insurance contract from full compliance with, or performance of, any lawful judgment, order, or decree with respect to the disposition of any sums paid thereunder as an indemnity.*

§ 404.86 *Determination of person to whom indemnity shall be paid.* In any case where the insured has transferred his interest in all or a portion of the wheat crop on any farm, has died, has become incompetent, has disappeared, or has ceased to act as a fiduciary, payment in accordance with the provisions of these regulations will be made only after the facts have been established to the satisfaction of the Corporation. The determination of the Corporation as to the existence or nonexistence of a circumstance in the event of which payment may be made to a person other than the named insured and of the person to whom such payment shall be made shall be final and conclusive. Payment of any indemnity and settlement under any certificate of indemnity in accordance with an adjustment of loss made with such person shall constitute a complete discharge of the Corporation's obligation with respect to the loss for which such indemnity is paid and settled and shall be a bar to recovery by any other person.*

§ 404.87 *Payment conditioned upon compliance with provisions of the insurance contract.* Payment of any indemnity and settlement under any certificate of indemnity, whether to the applicant or any other person determined by the Corporation to be entitled to such indemnity in accordance with the provisions of these regulations, will be made only upon full compliance with all the provisions of the contract, including the warranties and provisions relating to notice and proof of loss. Any indemnity payable under the insurance contract shall

be subject to deduction for any amount remaining unpaid on the note for the insurance contract.*

MISCELLANEOUS

§ 404.90 *Gender and plural meaning of terms.* Any term used in the masculine or in the singular shall also be construed or applied in the feminine or neuter gender, or in the plural person, wherever the context or application of such term so requires.*

§ 404.91 *Fractional units in acres and yields.* Fractions of yields per acre and loss costs shall be rounded to the nearest tenth of a bushel. Fractions of premium rates shall be rounded to the nearest hundredth of a bushel. Fractions of bushels, other than yields per acre, loss costs, and premium rates, shall be rounded to the nearest bushel. Fractions of acres representing total acres of wheat shall be rounded to the nearest tenth of an acre. Computations shall be carried to one digit beyond the digit that is to be rounded. If the extra digit computed is 1, 2, 3, or 4, the rounding shall be downward. If the extra digit computed is 6, 7, 8, or 9, the rounding shall be upward. If the extra digit computed is 5, the computation shall be carried to another digit. If the two extra digits are 50, the rounding shall be downward, and if the two extra digits are 51 or any higher figure, the rounding shall be upward.*

§ 404.92 *Other insurance.* If the insured has or acquires any other "all-risk" insurance against substantially all the risks that are insured against under the insurance contract on the wheat crop or portion thereof covered in whole or in part by such insurance contract, whether valid or not, or whether collectible or not, the liability of the Corporation shall not be greater than its share would be if the amount of its obligation were divided equally between the Corporation and such other insurer or insurers.*

§ 404.93 *Subrogation.* The Corporation may require from the insured an assignment of all rights of recovery against any party for loss or damage to the extent that payment therefor is made by the Corporation, and the insured shall execute all papers required and shall do everything that may be necessary to secure such rights.*

§ 404.94 *Suit.* No suit or action shall be brought to enforce any claim for loss under the insurance contract unless all the requirements of such contract shall have been complied with.*

§ 404.95 *Restriction on purchase and sale of wheat.* The restriction on the purchase and sale of wheat, as provided in section 508 (d) of the Federal Crop Insurance Act, as amended, reads as follows:

Insofar as practicable, the Corporation shall purchase wheat only at the rate and to a total amount equal to the payment of premiums in cash by farmers or to replace promptly wheat sold to prevent deterioration; and shall sell wheat only to the extent

necessary to cover payments of indemnities and to prevent deterioration: *Provided, however*, That nothing in this section shall prevent prompt offset purchases and sales of wheat for convenience in handling. Nothing in this section shall prevent the Corporation from accepting, for the payment of premiums, notes payable in the commodity insured, or the cash equivalent, upon such security as may be determined pursuant to subsection (b) of this section, and from purchasing the quantity of the commodity represented by any of such notes not paid at maturity.

§ 404.96. *Review of determinations of county committee.* All determinations by county committees shall be subject to review and approval or revision by duly authorized representatives of the Corporation.*

Adopted by the Board of Directors on May 5, 1941.

[SEAL] R. M. EVANS,
Chairman.
Approved July 15, 1941.

PAUL H. APPLEBY,
Acting Secretary of Agriculture.

[F. R. Doc. 41-5080; Filed, July 16, 1941;
11:50 a. m.]

CHAPTER VII—AGRICULTURAL ADJUSTMENT ADMINISTRATION

PART 728—WHEAT

SUBPART C—1941

Results of Wheat Referendum 1941-1942 Marketing Year

I, Paul H. Appleby, Acting Secretary of Agriculture, acting under and pursuant to, and by virtue of, the authority vested in me by section 336 of the Agricultural Adjustment Act of 1938, as amended, do hereby make the following proclamation:

§ 728.206 *Results of wheat referendum.* In the referendum of wheat farmers conducted by the Secretary of Agriculture on the 31st day of May, 1941, to determine whether such farmers were in favor of or opposed to marketing quotas for wheat for the marketing year beginning July 1, 1941, the total number of votes cast was 559,630, of which 453,569, or 81.0 per centum were in favor of, and 106,061, or 19.0 per centum were opposed to, such marketing quotas. Therefore, the national marketing quota for wheat for the marketing year proclaimed by the Secretary of Agriculture on May 9, 1941, will be in effect for such year. (Sec. 336, 52 Stat. 55, 7 U.S.C. 1336)

Done at Washington, D. C., this 14th day of July 1941. Witness my hand and the seal of the Department of Agriculture.

[SEAL] PAUL H. APPLEBY,
Acting Secretary of Agriculture.

[F. R. Doc. 41-5074; Filed, July 16, 1941;
11:48 a. m.]

TITLE 24—HOUSING CREDIT

CHAPTER III—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 301—INSURANCE OF ACCOUNTS

AMENDMENT RELATING TO ADVERTISEMENT OF INSURANCE OF ACCOUNTS

JULY 10, 1941.

Be it resolved, That no hearing having been requested in accordance with the provisions of § 301.22 (d) of the Rules and Regulations for Insurance of Accounts after opportunity therefor was allowed in accordance with paragraph (b) thereof, § 301.7 of the Rules and Regulations for Insurance of Accounts is hereby amended, effective July 16, 1941, as follows:

(a) Paragraph (f) is relettered as paragraph (g).

(b) Paragraph (f) is amended to read as follows:

§ 301.7 Sales plans and practices.

(f) *Advertising of insurance of accounts.* An insured institution may advertise itself as a "member" of the Federal Savings and Loan Insurance Corporation. (Sec. 403 (b) of N.H.A., 48 Stat. 1257, sec. 23, 49 Stat. 298; 12 U.S.C. 1726 (b))

[SEAL] J. FRANCIS MOORE,
Secretary.

[F. R. Doc. 41-5073; Filed, July 16, 1941;
11:31 a. m.]

TITLE 31—MONEY AND FINANCE: TREASURY

CHAPTER I—MONETARY OFFICES

PART 131—GENERAL LICENSES UNDER EXECUTIVE ORDER NO. 8389, APRIL 10, 1940, AS AMENDED, AND REGULATIONS ISSUED PURSUANT THERETO

AMENDMENT OF GENERAL LICENSE NO. 45, UNDER EXECUTIVE ORDER NO. 8389, APRIL 10, 1940, AS AMENDED, AND REGULATIONS ISSUED PURSUANT THERETO, RELATING TO TRANSACTIONS IN FOREIGN EXCHANGE, ETC.¹

JULY 15, 1941.

General License No. 45² is hereby amended as follows:

Paragraphs (1) and (4) thereof are amended to read as follows:

§ 131.45 *General License No. 45.* (1) A general license is hereby granted authorizing any banking institution within the United States to make payments from blocked accounts, other than blocked accounts of Norway, Denmark, the Netherlands, Belgium, Luxembourg,

¹Sec. 5 (b), 40 Stat. 415 and 936; sec. 2, 48 Stat. 1; 54 Stat. 179; E.O. 8389, April 10, 1940, as amended by E.O. 8785, June 14, 1941; Regulations, April 10, 1940, as amended June 14, 1941.

²6 F.R. 2907.

France, Latvia, Estonia, Lithuania, Rumania, Bulgaria, Hungary, Yugoslavia, or Greece, or any national thereof, of documentary drafts drawn under irrevocable letters of credit issued or confirmed by a domestic bank prior to June 14, 1941.

(4) This license shall expire at the close of business on August 15, 1941.

[SEAL] E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 41-5071; Filed, July 16, 1941;
10:50 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER I—GENERAL LAND OFFICE

[Circular No. 1491]

PART 257—LEASE OR SALE OF TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL OR BUSINESS SITES

LEASE OR SALE OF TRACTS IN EXCESS OF FIVE ACRES IN IRREGULAR SECTIONS

Section 257.17 of Title 43 of the Code of Federal Regulations, contained in Circular No. 1470,¹ approved June 10, 1940, is hereby amended by adding thereto the following:

§ 257.17 Supplemental plats.

If the subdivision of the sectional lotting would result in narrow strips or other areas containing less than 2½ acres, not suitable for sale or lease as separate units, such excess areas, in the discretion of the Commissioner of the General Land Office, may be included in the adjoining 5-acre tracts. (52 Stat. 609; 43 U.S.C., Sup., 682a)

[SEAL] FRED W. JOHNSON,
Commissioner.

Approved: July 3, 1941.

W. C. MENDENHALL,
Acting Assistant Secretary.

[F. R. Doc. 41-5069; Filed, July 16, 1941;
9:55 a. m.]

Notices

WAR DEPARTMENT.

[Contract No. W 535 ac-16]

SUMMARY OF COST-PLUS-A-FIXED-FEE SUPPLY CONTRACT¹

CONTRACTOR: BOEING AIRCRAFT COMPANY

Contract for: * * * Airplanes, Spare parts and Data.

Estimated cost: \$89,851,680.00.

Fixed fee: \$5,391,016.80.

The supplies and services to be obtained by this instrument are authorized by, and for the purpose set forth in, and

¹5 F.R. 2284.

²Approved by the Under Secretary of War June 2, 1941.

are chargeable to the following Procurement Authorities, the available balances of which are sufficient to cover the cost of same: AC 299 P 111-99 A 0021-13.

This contract, entered into this 2d day of June 1941.

ARTICLE 1. Statement of work. The Contractor shall, within the time specified in Article 4 hereof, manufacture, furnish and deliver to the Government the following articles.

- Item (1) * * * Airplanes.
- Item (2) Spare parts for the Model * * * Airplanes and data.

ART. 2. Estimated costs.

Item	Quantity	Estimated cost
(1) * * * Airplanes-----		\$74,876,400.00
(2) Spare parts for the model * * * Airplanes_		14,975,280.00
Total estimated cost--		89,851,680.00

ART. 3. Consideration. The Government will pay the Contractor upon satisfactory delivery of all items specified in the contract, subject to advance payments as outlined in Article 6 hereof, the cost, plus a fixed fee of five million three hundred ninety-one thousand sixteen and eighty one-hundredths dollars (\$5,391,016.80).

ART. 5. Changes. The Contracting Officer may, at any time, by a written order, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work (without increasing the quantities herein specified) or direct the omission of work covered by the contract (without decreasing the quantities herein specified).

ART. 6. Payments—(a) Reimbursement for cost. The Government will currently reimburse the Contractor, subject to the provisions of paragraph (c) of this Article 6, for such expenditures made in accordance with Article 3 as may be approved or ratified by the Contracting Officer, and upon certification to and verification by the Contracting Officer of the original signed payrolls for labor, the original paid invoices for materials or other original papers.

(b) *Payment of the fixed fee.* Ninety per cent (90%) of the fixed fee of five million three hundred ninety-one thousand sixteen and eighty one-hundredths dollars (\$5,391,016.80), set forth in paragraph (a) of Article 3 hereof, shall be paid as it accrues, in monthly installments based upon the percentage of the completion of the work as determined from estimates made and approved by the Contracting Officer. Upon completion of the work and its final acceptance, any unpaid balance of the fee, including the additions thereto, if any, to which the Contractor may be entitled, as provided in said paragraph (a) of Article 3, shall be paid to the Contractor.

(c) *Advance payments.* At any time and from time to time after the approval of this contract, the Government, at the request of the Contractor and subject to the approval of the Chief of the Air Corps as to the present need therefor, shall

advance to the Contractor, without payment of interest thereon by the Contractor, sums not to exceed twenty-six million nine hundred fifty-five thousand five hundred four dollars (\$26,955,504.00) or thirty per centum (30%) of the estimated cost of this contract, exclusive of the fixed fee.

As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Secretary of War may prescribe.

ART. 9. Termination of contract by Government. The Government may terminate this contract by a notice in writing from the Contracting Officer to the Contractor.

First, in the event the Contractor shall at any time, refuse, neglect or fail to prosecute the work with promptness and diligence, or default in the performance of any of the agreements herein contained.

Second, in the event conditions arise which make it advisable or necessary in the interest of the Government to cease work under this contract.

ART. 17. Title to property. The title to all work under this contract, completed or in the course of manufacture or assembly at the Contractor's plant, shall be in the Government. Upon deliveries at the Contractor's plant, or at an approved storage site, title to all purchased materials, parts, assemblies and sub-assemblies, for which the Contractor shall be entitled to be reimbursed hereunder, shall vest in the Government.

ART. 23. Option to change to a fixed price. After the Contractor has manufactured and delivered a total of * * * airplanes under the terms of this contract, or at such other time as may be mutually agreed upon by the parties hereto, the parties hereto shall, at the written request of either party given to the other, enter into negotiations to determine whether or not it is possible to reach an agreement, on the basis of the experience then available or on the basis of other pertinent knowledge or information, as to a definite fixed price to be paid by the Government to the Contractor for each of the airplanes and spare parts called for under the terms of this contract, in lieu of the cost plus a fixed fee hereinbefore provided for, and in the event that such an agreement be reached and reduced to writing, it shall be provided that the fixed price per unit for each model of the airplanes and spare parts herein called for shall apply, not only to units thereafter to be delivered under the terms of this contract, but shall likewise apply to units theretofore delivered, for which proper adjustment shall be made.

ART. 28. Special condition. This contract is entered into with the understanding that by a separate contract to be entered into within * * * days from and after the date of approval hereof, or within such further time as shall be mutually agreed upon, or by an

arrangement otherwise made and satisfactory to the Contractor, provision shall be made covering facilities in addition to those now available to the Contractor which are necessary to enable the Contractor to manufacture the airplanes and spare parts herein called for and within the time herein specified.

ART. 30. Fire insurance. The Contractor agrees, unless and until otherwise directed in writing by the Contracting Officer, to insure against fire all property in its possession upon which an advance payment or a payment in reimbursement for costs is about to be made, such insurance to be in a sum at least equal to the amount of such payment plus all other advance payments or payments in reimbursement of costs, if any, theretofore made thereon and/or all property furnished to the Contractor by the Government for installation in the articles to be manufactured by the Contractor under this contract, and further agrees to keep such property so insured until the same is delivered to the Government.

This contract authorized under the provisions of sec. 1 (a) Act of July 2, 1940.

FRANK W. BULLOCK,
Major, Signal Corps,
Assistant to the Director of
Purchases and Contracts.

[F. R. Doc. 41-5066; Filed, July 16, 1941;
9:54 a. m.]

[Change No. 3 to Contract No. W 535
ac-15007¹]

CHANGE ORDER

CONTRACTOR: SPERRY GYROSCOPE COMPANY,
INC., MANHATTAN BRIDGE PLAZA, BROOKLYN,
NEW YORK

Subject: Additional Flight and Turn Indicators.

Affecting: Contract W 535 ac-15007, as amended.

Under the provisions of Paragraph (2) Article 19 of Contract W 535 ac-15007, permitting increases, the quantity of Flight and Turn Indicators called for under the terms of Items 1 and 2 of Paragraph (1), Article 16 of the Contract, as amended, is hereby increased as follows:

a. The quantity of Indicator Assemblies, Flight, * * *, called for under Item 1, Paragraph (1), Article 16 of Contract W 535 ac-15007, as amended, is hereby further increased from * * * to * * *; total for additional assemblies, \$450,000.00.

b. The quantity of Indicator Assemblies, Turn, * * *, called for under Item 2, Paragraph (1), Article 16 of Contract W 535 ac-15007, as amended, is hereby further increased from * * * to * * *; total for additional assemblies, \$741,000.00; total, \$1,191,000.00.

As the result and in consideration of advance payment heretofore made in the amount of thirty (30%) percent of the

original contract price, the unit price of all articles called for under Sub-paragraphs a and b, Paragraph (1) of this Change Order, and under Sub-paragraph a, Paragraph (1) of Change Order, Serial No. 3719, Change No. 1, dated January 14, 1941, is hereby reduced in the amount of \$* * *, as provided for in Paragraph (2), Article 21 of the original Contract; total credit, \$10,320.00.

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in and are chargeable to the following Procurement Authorities:

Debit:

AC 34 P 12-3037 A 0705-01
AC 28 P 82-3037 A 0705-01
AC 30 P 85-30 A 0705-12

Credit:

AC 34 P 12-3037 A 0705-01
AC 28 P 82-3037 A 0705-01
AC 30 P 85-30 A 0705-12

the available balances of which are sufficient to cover cost of same.

FRANK W. BULLOCK,
Major, Signal Corps,
Assistant to the Director of
Purchases and Contracts.

[F. R. Doc. 41-5067; Filed, July 16, 1941;
9:55 a. m.]

DEPARTMENT OF THE INTERIOR.

General Land Office.

AIR NAVIGATION SITE WITHDRAWAL No. 9
REVOKED

UTAH

Departmental order of August 24, 1928, withdrawing the following-described land in Utah under the provisions of the act of May 24, 1928, 45 Stat. 728, for use by the Department of Commerce as beacon sites and intermediate landing fields in the maintenance of air navigation facilities is hereby revoked:

SALT LAKE MERIDIAN

T. 35 S., R. 11 W., sec. 33, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 36 S., R. 11 W., sec. 4, lot 1, S $\frac{1}{2}$ NE $\frac{1}{4}$.

[SEAL]

W. C. MENDENHALL,
Acting Assistant Secretary.

JUNE 30, 1941.

[F. R. Doc. 41-5068; Filed, July 16, 1941;
9:55 a. m.]

DEPARTMENT OF AGRICULTURE.

Office of the Secretary.

[Memorandum No. 915]

DELEGATION OF REGULATORY POWERS

JUNE 6, 1941.

Pursuant to the authority vested by law (54 Stat. 81, 5 U.S.C., Supp. V, 516a-516e, inc.) in the Secretary of Agriculture, Mr. Robert H. Shields is hereby designated Assistant to the Secretary and is authorized to perform such regu-

No. 138—5

latory functions devolving upon the Secretary under the Sugar Act of 1937, as amended (50 Stat. 903, 7 U.S.C., Supp. V, 1100-1183, inc.), together with such other functions as may hereafter be assigned to him.

[SEAL]

CLAUDE R. WICKARD,
Secretary.

[F. R. Doc. 41-5081; Filed, July 16, 1941;
11:50 a. m.]

[Memorandum No. 915, Supplement 1]

DELEGATION OF REGULATORY POWERS

JUNE 24, 1941.

Secretary's Memorandum No. 915, dated June 6, 1941, is hereby amended to read as follows:

"Pursuant to the authority vested by law (54 Stat. 81, 5 U.S.C., Supp. V, 516a-516e, inc.) in the Secretary of Agriculture, Mr. Robert H. Shields is hereby designated Assistant to the Secretary and is authorized to perform such regulatory functions devolving upon the Secretary under the Sugar Act of 1937, as amended (50 Stat. 903, 7 U.S.C., Supp. V, 1100-1183, inc.), and the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 246, 7 U.S.C., Supp. V, 671-674, inc.), together with such other functions as may hereafter be assigned to him."

[SEAL]

PAUL H. APPLEBY,
Acting Secretary.

[F. R. Doc. 41-5082; Filed, July 16, 1941;
11:50 a. m.]

[Memorandum No. 915, Supplement No. 2]

DELEGATION OF REGULATORY POWERS

JUNE 24, 1941.

The authority of Mr. Robert H. Shields, Assistant to the Secretary, is hereby extended to include the performance of such regulatory functions devolving upon the Secretary under the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 246, 7 U.S.C., Supp. V, 671-674, inc.), as may hereafter be assigned to him.

The original designation of and delegation to Mr. Shields was made on June 6, 1941, in Secretary's Memorandum No. 915.

[SEAL]

PAUL H. APPLEBY,
Acting Secretary.

[F. R. Doc. 41-5083; Filed, July 16, 1941;
11:50 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

Notice is hereby given that Special Certificates authorizing the employment of

learners at hourly wages lower than the minimum wage rate applicable under section 6 of the Act are issued under section 14 thereof, Part 522 of the Regulations issued thereunder (August 16, 1940, 5 F.R. 2862) and the Determination and Order or Regulation listed below and published in the FEDERAL REGISTER as here stated.

Apparel Learner Regulations, September 7, 1940 (5 F.R. 3591).

Artificial Flowers and Feathers Learner Regulations, October 24, 1940 (5 F.R. 4203).

Glove Findings and Determination of February 20, 1940, as amended by Administrative Order of September 20, 1940 (5 F.R. 3748).

Hosiery Learner Regulations, September 4, 1940 (5 F.R. 3530).

Independent Telephone Learner Regulations, September 27, 1940 (5 F.R. 3829).

Knitted Wear Learner Regulations, October 10, 1940 (5 F.R. 3982).

Millinery Learner Regulations, Custom Made and Popular Priced, August 29, 1940 (5 F.R. 3392, 3393).

Textile Learner Regulations, May 16, 1941 (6 F.R. 2446).

Woolen Learner Regulations, October 30, 1940 (5 F.R. 4302).

The employment of learners under these Certificates is limited to the terms and conditions as to the occupations, learning periods, minimum wage rates, et cetera, specified in the Determination and Order or Regulation for the industry designated above and indicated opposite the employer's name. These Certificates become effective July 17, 1941. The Certificates may be cancelled in the manner provided in the Regulations and as indicated in the Certificates. Any person aggrieved by the issuance of any of these Certificates may seek a review or reconsideration thereof.

NAME AND ADDRESS OF FIRM, INDUSTRY,
PRODUCT, NUMBER OF LEARNERS AND
EXPIRATION DATE

Bessdress Company, 907 Broadway, Fall River, Massachusetts; Apparel; Children's Dresses; 52 learners (75% of the applicable hourly minimum wage); November 13, 1941.

Collegian Cap Company, 14 Catherine Street, Utica, New York; Apparel; Ski Caps; 4 learners (75% of the applicable hourly minimum wage); September 25, 1941.

Comfort Corset Corporation, 2311 West Street, Union City, New Jersey; Apparel; Corsets, Brassieres, Corselettes; 5 learners (75% of the applicable hourly minimum wage); July 17, 1942.

Morris Freezer and Company, West Main Street, Wytheville, Virginia; Apparel; Boys' Cotton Shirts; 10 percent (75% of the applicable hourly minimum wage); January 17, 1942. (This certificate replaces one effective October 15, 1940.)

Hershey Garment Company, Paradise, Pennsylvania; Apparel; Slips, Nightgowns; 5 percent (75% of the applicable hourly minimum wage); October 15, 1941.

Hicks-Hayward Company, 309 South Santa Fe Street, El Paso, Texas; Apparel; Pants & Overalls, 100% Cotton; 5 percent (75% of the applicable hourly minimum wage); July 17, 1942.

The Jay Garment Company, South Meridian Street, Portland, Indiana; Apparel; Men's Shirts & Pants, Children's Overalls, Men's & Boys' Coveralls, Children's Outerwear; 5 percent (75% of the applicable hourly minimum wage); July 17, 1942.

LeBow Brothers, 100 West Baltimore Street, Baltimore, Maryland; Apparel; Men's Topcoats, Overcoats, Tuxedos; 10 learners (75% of the applicable hourly minimum wage); July 17, 1942.

Merit Shirt Corporation, Herbert and Smith Streets, Perth Amboy, New Jersey; Apparel; Shirts; 5 percent (75% of the applicable hourly minimum wage); February 17, 1942.

Mitchell Brothers, Inc., 1730 State Street, Bridgeport, Connecticut; Apparel; Ladies' Undergarments; 5 percent (75% of the applicable hourly minimum wage); January 13, 1942.

A. Morganstern and Company, Fredericksburg, Virginia; Apparel; Pants; 5 learners (75% of the applicable hourly minimum wage); July 17, 1942. (This certificate replaces one issued effective November 28, 1940.)

New Brunswick Cap Company, Inc., 300 Brook Street, Scranton, Pennsylvania; Apparel; Men's & Boys' Caps; 5 learners (75% of the applicable hourly minimum wage); January 17, 1942.

Opotowsky Brothers, Inc., New Orleans, Louisiana; Apparel; Manufacture of Linerie; 3 learners (75% of the applicable hourly minimum wage); July 17, 1942.

Peerless Dress Company, Inc., High Street & Delaware Avenue, Burlington, New Jersey; Apparel; Dresses; 5 learners (75% of the applicable hourly minimum wage); January 27, 1942. (This certificate made effective for July 15, 1941 and replaces one issued on January 27, 1941, for your plant at its former address on Washington Avenue, Burlington, New Jersey.)

Peerless Dress Company, Inc., High Street and Delaware Avenue, Burlington, New Jersey; Apparel; Dresses; 10 learners (75% of the applicable hourly minimum wage); September 11, 1941. (This certificate made effective July 15, 1941 and replaces one issued on May 15, 1941, for your plant at its former address on Washington Avenue, Burlington, New Jersey.)

Peter Piper Clothes, Inc., S. E. Corner 10th and Berke Streets, Philadelphia, Pennsylvania; Apparel; Boys' Wash Suits; 45 learners (75% of the applicable hourly minimum wage); October 28, 1941. (This certificate made effective July 15, 1941.)

Peter Piper Clothes, Inc., S. E. Corner 10th and Berke Streets, Philadelphia, Pennsylvania; Apparel; Boys' Wash

Suits; 5 percent (75% of the applicable hourly minimum wage); July 15, 1942. (This certificate made effective July 15, 1941 and replaces one issued on November 25, 1940, for your plant at its former address at 146 N. 13th Street.)

Phillips-Jones Corporation, Barnesboro, Pennsylvania; Apparel; Army Shorts and Army Shirts; 10 percent (75% of the applicable hourly minimum wage); October 9, 1941.

Phillips-Jones Corporation, Sunbury Street, Minersville, Pennsylvania; Apparel; Army Shirts; 10 percent (75% of the applicable hourly minimum wage); October 9, 1941.

Phillips-Jones Corporation, Sixth and Ruddle Street, Coaldale, Pennsylvania; Apparel; Army Shirts; 10 percent (75% of the applicable hourly minimum wage); October 9, 1941.

A. Schwartz, 127 East Ninth Street, Los Angeles, California; Apparel; Sportswear and Other Outerwear; 5 learners (75% of the applicable hourly minimum wage); July 17, 1942.

Star Coat Front Company, 90 Wareham Street, Boston, Massachusetts; Apparel; Coat Fronts—Canvas; 5 learners (75% of the applicable hourly minimum wage); July 17, 1942.

T & S Dress Company, High Street & Delaware Avenue, Burlington, New Jersey; Apparel; Dresses; 5 learners (75% of the applicable hourly minimum wage); May 15, 1942. (This certificate made effective July 15, 1941, and replaces one issued on May 15, 1941, for your plant at its former address on Washington Avenue, Burlington, New Jersey.)

Waldman and Greenberg, 223-226 Pratt Street, Hammonton, New Jersey; Apparel; Men's Trousers; 5 percent (75% of the applicable hourly minimum wage); July 17, 1942.

Western Neckwear Manufacturing Company, 88 First Street, San Francisco, California; Apparel; Men's Neckwear; 2 learners (75% of the applicable hourly minimum wage); January 17, 1942. (This certificate replaces one issued effective March 10, 1941.)

Wildman Manufacturing Company, 905 Washington Avenue, St. Louis, Missouri; Apparel; Dresses; 12 learners (75% of the applicable hourly minimum wage); November 13, 1941.

Abraham Gerstenzang, Incorporated, 41-51 25th Street, New York; Artificial Flowers and Feathers; Flowers, Feathers; 10 learners; August 25, 1941. (Omitted from Register of July 14, 1941.)

West Orange Hosiery Mills, Inc., Hackettstown, New Jersey; Hosiery; Full Fashioned Hosiery; 10 learners; March 17, 1942.

Ware Knitters, Inc., Ware, Massachusetts; Knitted Wear; Knitted Outerwear; 16 learners; November 13, 1941.

Pennsylvania Ribbon Manufacturers, Seventh and Somerset Street, Philadelphia, Pennsylvania; Textile; Ribbon, Tape; 3 learners; December 31, 1941.

Raeform Mills, Inc., Raeform, North Carolina; Textile; Cotton Yarns; 3 percent; July 17, 1942.

Signed at Washington, D. C., this 16th day of July 1941.

GUSTAV PECK,
Authorized Representative
of the Administrator.

[F. R. Doc. 41-5084; Filed, July 16, 1941; 11:52 a. m.]

NOTICE OF HEARING¹ ON MINIMUM WAGE RECOMMENDATION OF INDUSTRY COMMITTEE NO. 30 FOR THE LUMBER AND TIMBER PRODUCTS INDUSTRY

Whereas the Administrator of the Wage and Hour Division, United States Department of Labor, acting pursuant to section 5 (b) of the Fair Labor Standards Act of 1938, on May 17, 1941, by Administrative Order No. 109, appointed Industry Committee No. 30 for the Lumber and Timber Products Industry, composed of an equal number of representatives of the public, employers in the industry, and employees in the industry, selected with due regard to the geographical regions in which the industry is carried on; and

Whereas Industry Committee No. 30, on June 26, 1941, recommended a minimum wage rate for the Lumber and Timber Products Industry and duly adopted a report containing said recommendation and on June 27, 1941, filed its report with the Administrator in accordance with section 8 (d) of the Act and § 511.19 of the regulations issued under the Act; and

Whereas the Administrator is required by section 8 (d) of the Act, after giving due notice and an opportunity to be heard to interested persons, to approve and carry into effect by order the recommendation of Industry Committee No. 30 if he finds that the recommendation is made in accordance with law, is supported by the evidence adduced at the hearing before him and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of the Act; and, if he finds otherwise, to disapprove such recommendation;

Now, therefore, notice is hereby given:

I. Industry Committee No. 30 for the Lumber and Timber Products Industry has made the following recommendation for the minimum wage rate to be paid to employees in the Lumber and Timber Products Industry:

Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce in the Lumber and Timber Products Industry, as defined in Administrative Order No. 109 issued by the

¹ To be held August 5, 1941 at Washington, D. C.

Administrator of the Wage and Hour Division on May 17, 1941, a minimum wage rate of not less than 35 cents per hour.

II. The definition of the Lumber and Timber Products Industry as set forth in Administrative Order No. 109 is as follows:

Wood saw milling and surfacing; wood reworking, including but without limitation kiln or air drying, and the manufacture of planing mill products, dimension stock, boxes, and wood turnings and shapings; and the manufacture of specialized timber products including but without limitation shingles, cooperage stock, veneer, plywood, and veneer packaging: *Provided, however,* That the term does not include cooperage or the manufacture of cigar boxes, cork products, reed and rattan products except vegetable and fruit baskets, or furniture and furniture parts as defined in Administrative Order No. 108.

The manufacture of any products covered under the definition shall be deemed to begin with the unloading of the raw material at the mill site.

The definition of the Lumber and Timber Products Industry covers all occupations in the industry which are necessary to the production of products covered in the definition including clerical, maintenance, shipping and selling occupations: *Provided, however,* This definition does not cover clerical, maintenance, shipping and selling occupations when carried on in an establishment, the greater part of whose sales are of products not covered in the definition, or employees of an independent wholesaler or employees of a manufacturer who are engaged exclusively in marketing and distributing products of the industry which have been purchased for resale: *And provided further,* That where an employee covered by this definition is employed during the same workweek at two or more different minimum rates of pay, he shall be paid the highest of such rates for such workweek unless records concerning his employment are kept by his employer in accordance with applicable regulations of the Wage and Hour Division.

III. The full text of the Report and Recommendation of Industry Committee No. 30 are and will be available for inspection by any person between the hours of 9:00 a. m. and 4:30 p. m. at the following offices of the Wage and Hour Division, United States Department of Labor:

Boston, Massachusetts, 120 Boylston Street.

New York, New York, 341 Ninth Avenue.

Newark, New Jersey, Essex Building, 31 Clinton Street.

Philadelphia, Pennsylvania, 1216 Widener Building, Chestnut & Juniper Streets.

Pittsburgh, Pennsylvania, 216 Old Post Office Building, Fourth and Smithfield Streets.

Richmond, Virginia, 215 Richmond Trust Building, 627 East Main Street.

Baltimore, Maryland, 201 North Capitol Street.

Raleigh, North Carolina, North Carolina Department of Labor, Salisbury and Edenton Streets.

Columbia, South Carolina, Federal Land Bank Building, Hampton & Marion Streets.

Atlanta, Georgia, Witt Building, 249 Peachtree Street NE.

Jacksonville, Florida, 456 New Post Office Building.

Birmingham, Alabama, 1007 Comer Building, 2nd Avenue & 21st Street.

New Orleans, Louisiana, 1512 Pere Marquette Building.

Nashville, Tennessee, 509 Medical Arts Building, 119 Seventh Avenue, N.

Cleveland, Ohio, Main Post Office, W. 3rd and Prospect Avenue.

Cincinnati, Ohio, 1312 Traction Building.

Detroit, Michigan, 348 Federal Building.

Chicago, Illinois, 1200 Merchandise Mart, 222 W. North Bank Drive.

Minneapolis, Minnesota, 406 Pence Building, 730 Hennepin Avenue.

Kansas City, Missouri, 504 Title & Trust Building, Tenth & Walnut Streets.

St. Louis, Missouri, 100 Old Federal Building.

Denver, Colorado, 300 Chamber of Commerce Building.

Dallas, Texas, 824 Santa Fe Building, 1114 Commerce Street.

San Francisco, California, Room 500, Humboldt Bank Building, 785 Market Street.

Los Angeles, California, 417 H. W. Hellman Building.

Seattle, Washington, 305 Post Office Building.

San Juan, Puerto Rico, Post Office Box 112.

Washington, District of Columbia, Department of Labor, 4th Floor.

Copies of the Committee's report and recommendation, and of any dissenting statements filed by members of the Committee, are available for inspection at, and may be obtained by writing to, the office of the Wage and Hour Division, United States Department of Labor, Washington, D. C.

IV. A public hearing for the purpose of taking evidence on the question of whether the recommendation of Industry Committee No. 30 shall be approved or disapproved pursuant to section 8 of the Act will be held on August 5, 1941, at 10:00 a. m. in Conference Rooms A and B, Interdepartmental Auditorium, 14th Street and Constitution Avenue, Washington, D. C., before Henry T. Hunt, Esquire, Principal Hearings Examiner of the Wage and Hour Division, United States Department of Labor, as Presiding Officer.

V. Any interested person supporting or opposing the recommendations of Industry Committee No. 30 may appear at the hearing to offer evidence either on his

own behalf or on behalf of any other person if not later than August 1, 1941, he files with the Administrator, by mail or otherwise, at Washington, D. C., a notice of his intent to appear, which shall contain the following information:

1. The name and address of the person appearing.

2. If such person is appearing in a representative capacity, the name and address of the person or persons he is representing.

3. Whether such person proposes to appear for or against the recommendation of the Committee.

4. The approximate length of time requested for his presentation.

VI. Any interested person may secure further information concerning the aforesaid hearing by inquiry directed to the Administrator of the Wage and Hour Division, United States Department of Labor, Washington, D. C., or by consulting with attorneys representing the Administrator, who will be available for that purpose at the office of the Wage and Hour Division in Washington, D. C.

VII. Copies of the following documents relating to the Lumber and Timber Products Industry will be available for inspection by any interested person between the hours of 9:00 a. m. and 4:30 p. m. at the office of the Wage and Hour Division enumerated in paragraph III above:

Preliminary Report on Average Hourly Earnings in the Lumber and Timber Products Industry, 1939-40, prepared by the Bureau of Labor Statistics, United States Department of Labor.

Hourly Earnings in the Manufacture of Wood Turnings, Shapes, and Miscellaneous Wood Products, 1941, prepared by the Bureau of Labor Statistics, United States Department of Labor.

Hourly Earnings in Small Logging Camps and Sawmills, 1939-40 (Supplement to *Preliminary Report on Average Hourly Earnings in the Lumber and Timber Products Industry, 1939-40*), prepared by the Bureau of Labor Statistics, United States Department of Labor, June 9, 1941.

Minimum Wages in the Lumber and Timber Products Industry, report prepared by the Research and Statistics Branch, Wage and Hour Division, United States Department of Labor.

Lumber Industry Facts, 1941, booklet published by the National Lumber Manufacturers Association, Washington, D. C.

Industrial Reference Service Bulletin, Part 4, Forest Products, prepared by the Bureau of Foreign and Domestic Commerce, United States Department of Commerce, June, 1941.

Mimeographed release issued by the Bureau of Labor Statistics of the United States Department of Labor, entitled, *Changes in Cost of Living, April 18, 1941, to May 15, 1941*.

Bulletin, Serial No. R. 1298, entitled, *Changes in Cost of Living*, March 15, 1941, prepared by the Bureau of Labor

Statistics of the United States Department of Labor.

Bulletin, Serial No. R. 1166, entitled, *The Bureau of Labor Statistics' New Index of Cost of Living, March 15, 1940*, prepared by the Bureau of Labor Statistics of the United States Department of Labor.

Bulletin, Serial No. R. 963, reprint from the *Monthly Labor Review* of July 1939, entitled, *Differences in Living Costs in Northern and Southern Cities*.

Mimeographed release issued by the Bureau of Labor Statistics of the United States Department of Labor, entitled, *Changes in Cost of Living, March 15 to April 15, 1941*.

The record made at the public hearing on the Lumber and Timber Products Industry before Industry Committee No. 30 may be examined by any interested person at the office of the Wage and Hour Division, United States Department of Labor, Washington, D. C., and may be obtained at prescribed rates from the official reporter of the Wage and Hour Division, United States Department of Labor, Washington, D. C. The foregoing reports and record will be offered in evidence at the public hearing herein referred to.

VIII. The hearing will be conducted in accordance with the following rules of procedure subject to such subsequent modification by the Administrator or the Principal Hearings Examiner as are deemed appropriate:

1. The hearing shall be stenographically reported and a transcript made which shall be available at prescribed rates to any person upon request made to the official reporter of the Wage and Hour Division, United States Department of Labor, Washington, D. C.

2. In order to maintain orderly and expeditious procedure, each person filing a Notice to Appear shall be notified, if practicable of the approximate day and the place at which he may offer evidence at the hearing. If such person does not appear at the time set in the notice he will not be permitted to offer evidence at any other time except by special permission of the presiding officer.

3. At the discretion of the presiding officer, the hearing may be continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the presiding officer, or by other appropriate notice.

4. At any stage of the hearing, the presiding officer may call for further evidence upon any matter. After the presiding officer has closed the hearing before him, no further evidence shall be taken, except at the request of the Administrator, unless provision has been made at the hearing for the later receipt of such evidence. In the event that the Administrator shall cause the hear-

ing to be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place fixed for such further taking of testimony shall be given to all persons who have filed a notice of intention to appear at the hearing.

5. All evidence must be presented under oath or affirmation.

6. Written documents or exhibits, except as otherwise permitted by the presiding officer, must be offered in evidence by a person who is prepared to testify as to the authenticity and trustworthiness thereof, and who shall, at the time of offering the documentary exhibit, make a brief statement as to the contents and manner of preparation thereof.

7. Written documents and exhibits shall be tendered in duplicate and the persons preparing the same shall be prepared to supply additional copies if such are ordered by the presiding officer. Where evidence is embraced in a document containing matter not intended to be put in evidence, such a document will not be received, but the person offering the same may present to the presiding officer the original document together with two copies of those portions of the document intended to be put in evidence. Upon presentation of such copies in proper form the copies will be received in evidence.

8. Subpoenas requiring the attendance of witnesses or the presentation of a document from any place in the United States at any designated place of hearing may be issued by the Administrator at his discretion, and any person appearing in the proceeding may apply in writing for the issuance by the Administrator of the subpoena. Such applications shall be timely and shall identify exactly the witness or document and state fully the nature of the evidence proposed to be secured.

9. Witnesses summoned by the Administrator shall be paid the same fees and mileage as are paid witnesses in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance witnesses appear, and the Administrator before issuing subpoena may require a deposit of an amount adequate to cover the fees and mileage involved.

10. The rules of evidence prevailing in courts of law or equity shall not be controlling.

11. The presiding officer may, at his discretion, permit any person appearing in the proceeding to cross-examine any witness offered by another person in so far as is practicable, and to object to the admission or exclusion of evidence by the presiding officer. Requests for permission to cross-examine a witness offered by another person and objections to the admission or exclusion of evidence shall be stated briefly with the reasons

for such request or the ground of objection relied on. Such requests or objections shall become a part of the record, but the record shall not include argument thereon except as ordered by the presiding officer. Objections to the approval of the Committee's recommendation and to the promulgation of a wage order based upon such approval must be made at the hearing before the presiding officer.

12. Before the close of the hearing the presiding officer shall receive written requests from persons appearing in the proceeding for permission to make oral arguments before the Administrator upon the matter in issue. These requests will be forwarded to the Administrator by the presiding officer with the record of the proceedings. If the Administrator, in his discretion, allows the request, he shall give such notice thereof as he deems suitable to all persons appearing in the proceeding, and shall designate the time and place at which the oral arguments shall be heard. If such requests are allowed, all persons appearing at the hearing will be given opportunity to present oral argument.

13. Briefs (12 copies) may be submitted to the Administrator following the close of the hearings, by any persons appearing therein. Notice of the final dates for filing such briefs shall be given by the Administrator in such manner as shall be deemed suitable by him.

14. On the close of the hearing the presiding officer shall forthwith file a complete record of the proceedings with the Administrator. The presiding officer shall not file an intermediate report unless so directed by the Administrator. If a report is filed, it shall be advisory only and have no binding effect upon the Administrator.

15. No order issued as a result of the hearing will take effect until after due notice is given of the issuance thereof by publication in the *FEDERAL REGISTER*.

Signed at Washington, D. C., this 9th day of July 1941.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 41-5085; Filed, July 16, 1941;
11:52 a. m.]

FEDERAL POWER COMMISSION.

[Docket No. G-140]

CORPORATION SERVICE COMPANY, RUFUS C. COULTER, GEORGE WATTS (TRUSTEE) v. MISSISSIPPI RIVER FUEL CORPORATION

ORDER CONTINUING DATE OF HEARING

JULY 15, 1941.

It appearing to the Commission that:

(a) By order of June 17, 1941, the Commission directed that a public hearing in

this matter be held commencing on July 21, 1941, at 9:45 o'clock, a. m. (C. S. T.), in Room 521, Federal Building, in the City of Little Rock, Arkansas;

(b) On July 11, 1941, the Mississippi River Fuel Corporation filed an application for a continuance of the date fixed for said hearing;

(c) Good cause has been shown for granting such continuance;

The Commission orders that: The public hearing in this matter heretofore ordered to commence on July 21, 1941, be and it is hereby continued to August 18, 1941, at the same hour and place heretofore designated.

By the Commission.

[SEAL]

LEON M. FUQUAY,
Secretary.

[F. R. Doc. 41-5070; Filed, July 16, 1941;
10:23 a. m.]

FEDERAL WORKS AGENCY.

Office of the Administrator.

[General Order No. 37]

CONSOLIDATING INTO THE OFFICE OF THE FEDERAL WORKS ADMINISTRATOR ALL ADMINISTRATIVE FUNCTIONS RELATING TO DEFENSE PUBLIC WORKS AND EQUIPMENT, OF A LEGAL CHARACTER, IN AND OF THE PUBLIC WORKS ADMINISTRATION

Pursuant to the Independent Offices Appropriation Acts, 1941 and 1942, and under authority otherwise conferred upon the Federal Works Administrator, I hereby order that, effective June 30, 1941:

(1) Any and all administrative functions relating to defense public works and equipment, of a legal character, in and of the Public Works Administration shall be consolidated into the Office of the Federal Works Administrator;

(2) All positions relating to the performance of such functions shall be transferred to such Office;

(3) Of the persons now holding such positions, there shall be transferred to such Office those listed on a Special Schedule thereof on file in my office;

(4) There shall be transferred to the appropriations made available by the Independent Offices Appropriation Acts, 1941 and 1942, from funds available for administrative expenses of the Public

Works Administration, such sums as have been allocated for the performance of all administrative functions relating to defense public works and equipment, of a legal character, in and of said Administration; and

(5) The savings in funds appropriated to the Federal Works Agency, resulting from this consolidation, shall be impounded and returned to the Treasury.

In testimony whereof, I have hereunto set my hand and official seal at the city of Washington this 30th day of June 1941.

[SEAL]

JOHN M. CARMODY,
Federal Works Administrator.

[F. R. Doc. 41-5084; Filed, July 16, 1941;
9:54 a. m.]

[General Order No. 38]

CONSOLIDATING INTO THE OFFICE OF THE FEDERAL WORKS ADMINISTRATOR ALL ADMINISTRATIVE FUNCTIONS OF A LEGAL CHARACTER IN AND OF THE PUBLIC BUILDINGS ADMINISTRATION

Pursuant to the Independent Offices Appropriation Acts, 1941 and 1942, and under authority otherwise conferred upon the Federal Works Administrator, I hereby order that, effective June 30, 1941:

(1) Any and all administrative functions of a legal character in and of the Public Buildings Administration shall be consolidated into the Office of the Federal Works Administrator;

(2) All positions relating to the performance of such functions shall be transferred to such Office;

(3) Of the persons now holding such positions, there shall be transferred to such Office those listed on a Special Schedule thereof on file in my office;

(4) There shall be transferred to the appropriations made available by the Independent Offices Appropriation Acts, 1941 and 1942, from funds available for administrative expenses of the Public Buildings Administration, such sums as have been allocated for the performance of all administrative functions of a legal character in and of said Administration; and

(5) The savings in funds appropriated to the Federal Works Agency, resulting from this consolidation, shall be impounded and returned to the Treasury.

In testimony whereof, I have hereunto set my hand and official seal at the city

of Washington this 30th day of June, 1941.

[SEAL]

JOHN M. CARMODY,
Federal Works Administrator.

[F. R. Doc. 41-5085; Filed, July 16, 1941;
9:54 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 54-27]

IN THE MATTER OF DERBY GAS & ELECTRIC CORPORATION AND OGDEN CORPORATION

ORDER RECONVENING HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 15th day of July, A. D. 1941.

Derby Gas & Electric Corporation and its parent, Ogden Corporation, both registered holding companies and both Delaware corporations, having filed a plan for corporate simplification of Derby Gas & Electric Corporation, pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935; and

Hearings having been held, briefs filed, and oral argument heard; and

The Commission having on July 12, 1941, issued Findings and Opinion in this matter as above entitled; and

The applicants having informed the Public Utilities Division of their intention to file an amendment embodying all changes required by the Commission's opinion and containing appropriate material bearing upon the solicitation of proxies before the date set herein for the reconvening of the hearing;

Wherefore it is ordered, That the hearing in the above entitled matter, which, on April 23, 1941, was continued subject to call of the Trial Examiner, be reconvened on the 23rd day of July, 1941, at 10 o'clock in the forenoon of that day, in Room 1101 of the Securities and Exchange Commission Building, 1778 Pennsylvania Avenue NW., Washington, D. C.

Notice of such hearing is hereby given to applicants and to any other persons whose participation in the proceedings herein may be in the public interest or for the protection of investors and consumers.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 41-5072; Filed, July 16, 1941;
11:30 a. m.]

